Supreme Court, U.S.
FILED

No. 06-1078 JAN 31 2007

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In The
Supreme Court of the United States

DEJA VU OF NASHVILLE, INC., a Tennessee corporation, and MERONEY ENTERTAINMENT, INC., a Tennessee corporation,

Petitioners,

v.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI VOLUME II, PAGES 218 TO 476

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January 31, 2007

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THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. I.

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or

as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

U.S. CONST. amend. XIV.

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

State of Tennessee

PUBLIC CHAPTER NO. 794

HOUSE BILL NO. 2926

By Representatives Robinson, Buck

Substituted for: Senate Bill No. 2634

By Senator Haynes

AN ACT to amend Tennessee Code Annotated, Section 27-9-111, relative to judicial review of certain final orders or judgments of a board or commission by requiring the hearing and adjudication of the cases within a specified period.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 27-9-111, is amended by adding the following language as a new, appropriately designated subsection:

> ( ) if the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct, protected by the First Amendment to the United States Constitution, and either the petitioner or the respondent requests an expedited hearing, the court shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari. When an expedited hearing is requested, the board or commission shall forward the transcript described in Tennessee Code Annotated, Section 27-9-109 within seven (7) days of the grant of the writ of certiorari.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL NO. 2926

PASSED: April 9, 1998

/s/ Jimmy Naifeh
JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

/s/ John S. Wilder
JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 23rd day of April 1998

/s/ Don Sundquist
DON SUNDQUIST, GOVERNOR

T.C.A. § 27-9-111 (2002). Hearings; findings

(a) At the expiration of ninety (90) days from the filing of the transcript, the cause shall stand for trial, and shall be heard and determined at the earliest practical date, as one having precedence over other litigation, except suits involving state, county or municipal revenue.

(b) The hearing shall be on the proof introduced before the board or commission contained in the transcript, and upon such other evidence as either party may desire to introduce.

(c) The judge shall reduce all findings of fact and conclusions of law to writing and make them parts of the record.

(d) In making such findings of fact, the judge shall weigh the evidence and determine the facts by the preponderance of the proof.

(e) If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall immediately grant the writ of certiorari, and shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari. When an expedited hearing is requested, the board or commission shall forward the transcript described in § 27-9-109 within seven (7) days of the grant of the writ of certiorari.

1951 Pub.Acts, c. 261, § 1; 1987 Pub.Acts, c. 28, §§ 1 to 3; 1998 Pub.Acts, c. 794, § 1, eff. April 23, 1998. Amended by 2002 Pub.Acts, c. 615, § 1.

Formerly 1932 Code, § 9014; § 27-911.

HISTORICAL AND STATUTORY NOTES

2002 Pub.Acts, c. 615, § 1, deleted the first sentence of subsec. (e), which formerly read: "If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution if the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari" and replaced it with the language "If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall immediately grant the writ of certiorari, and shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari."

2002 Pub.Acts, c. 615, § 2, provides:

"This act shall not take effect until such time as the United States Supreme Court has denied the petition for a writ of certiorari filed by the Metropolitan Government of Nashville and Davidson County in the case of Deja vu, Inc. v Metropolitan Government, 274 F.3d 377 (6th Cir. 2001), or if the United States Supreme Court grants a writ of certiorari, this act shall not take effect until such time as the United States Supreme Court affirms the Sixth Circuit's opinion on the issue of 'prompt judicial review.' If the United States Supreme Court reverses the Sixth Circuit's opinion on 'prompt judicial review' this act shall never take effect."

BILL NO. O97-796

AN ORDINANCE AMENDING TITLE 6 OF THE METROPOLITAN CODE OF LAWS BY ADDING A NEW CHAPTER 6.54, LICENSING AND REGULATION OF ADULT ENTERTAINMENT AND ADULT BUSINESSES.

WHEREAS, the Metropolitan County Council of the Metropolitan Government of Nashville and Davidson County ("Metropolitan Council") may, pursuant to Section 2.01(40) of its Charter and the general laws of the State of Tennessee, enact regulatory ordinances protecting and promoting the general welfare, health, and safety of its citizens; and,

WHEREAS, the Metropolitan Council has previously enacted Sections 17.12.080(29), 17.60.020(C)(1), and 17.64.270 of the MCL which regulate the location of sexually oriented businesses; and,

WHEREAS, since the adoption of the above-referenced ordinances, the Metropolitan Council has received and considered reports and recommendations from employees, citizens, other local governments, and other reputable sources and has determined that locational criteria alone do not adequately protect the health and general welfare of the people of Metropolitan Nashville Davidson County, and,

WHEREAS, the Metropolitan Council has determined that permitting and/or licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places for illegal sexual activity or solicitation; and,

WHEREAS, it is not the Intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult entertainment establishments; and,

WHEREAS, it is not the intent of the Metropolitan Council to condone or legitimize the distribution of obscene materials, and the Metropolitan Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state and federal enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in Metropolitan Davidson County; and,

WHEREAS, the locational requirements of the Adult Entertainment Zoning Ordinance are unaffected by the following amendment.

WHEREAS, the Metropolitan Council desires to amend the Code of Laws of the Metropolitan Government of Nashville and Davidson County ("MCL") to regulate adult entertainment establishments in order to promote and secure the general welfare, health, and safety of the citizens of Metropolitan Nashville and Davidson County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY.

SECTION 1. Purpose and Findings.

(A.) *PURPOSE*. It is the purpose of this ordinance to regulate adult entertainment establishments to promote the health, safety, morals, and general welfare of the citizens of Metropolitan Nashville Davidson County. The provisions of this ordinance have neither the purpose nor

effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials or entertainment. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented materials or entertainment to their intended market.

(B.) *FINDINGS.* Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and reports made available to the Metropolitan Council, and on findings incorporated in the *DLS d/b/a Diamonds and Lace Showbar v. The City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *DLS, Inc d/b/a Diamonds and Lace Showbar v. City of Chattanooga*, 914 F.Supp. 193 (E.D. Tenn. 1995); *DLS, Inc d/b/a Diamonds and Lace Showbar v City of Chattanooga*, 894 F.Supp. 1140 (E.D. Tenn. 1995); *City of Renton v. Playtime Theaters. Inc.*, 475 U.S. 41 (1986); *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976); and studies and judicial opinions concerning the adverse secondary effects of adult uses on communities such as Austin, Amarillo, and Beaumont, Texas; Phoenix and Tucson, Arizona; Minnesota [see Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989)], Seattle, Washington; [*see Northend Cinema, Inc. v. Seattle*, 90 Wash.2d 709, 585 P.2d 1153 (1978)]; and Houston, Texas; [see *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); as well as newspaper articles [*see Peep Shows Role Unregulated* (*Tennessean*, April 8, 1991)] reports from the Police Department and reports from the Department of Health of

the Metropolitan Government of Nashville and Davidson County, the Metropolitan Council finds:

1. Unlawful and unhealthy activities that are occurring within adult entertainment establishments are presently uncontrolled by the operators of these establishments and, there is presently no mechanism to control the unhealthy and unlawful activities that are occurring within these establishments or to make the owners and operators of these establishments responsible for the activities that occur on their premises.

2. Certain employees of adult entertainment establishments in Davidson County engage in a higher incidence of certain types sexually oriented criminal activity, unhealthy and illegal sexual contact, and other unlawful activities at these businesses than employees of other establishments

3 Sexual acts, including homosexual and heterosexual masturbatory acts and oral and anal sex acts, are a regular occurrence at adult entertainment establishments in Davidson County, especially those establishments where there are private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. Offering and providing such space, areas and rooms where such activities take place creates conditions that generate prostitution and other crimes, as well as unhealthy conditions.

5. Persons frequent certain adult theaters, adult bookstores, and adult video stores for the purpose of providing sex within the premises of such adult theaters, adult bookstores, and adult video stores and patrons frequent certain adult theaters, adult bookstores, adult

nightclubs, and adult video stores for the purpose of procuring prostitutes.

6. At least fifty communicable diseases may be spread by activities currently occurring in adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immuno-deficiency virus infection (HIV), genital herpes, hepatitis B, hepatitis Non A, hepatitis Non B, amebiasis, and shigella infections.

7. Since 1981 and to the present, there have been an increasing cumulative number of reported cases of acquired immuno-deficiency syndrome (AIDS) caused by the human immuno-deficiency virus (HIV) in the United States –

600 cases in 1982	8,555 in 1985	68,959 in 1994
2,200 in 1983	336,522 between	61,614 in 1995
4,600 in 1984	1986 and 1992	and 36,693 cases
	77,641 in 1993	in 1996;

and in Tennessee –

3 cases in 1982	345 in 1987	2,380 in 1992
7 in 1983	666 in 1988	1,308 in 1993
28 in 1984	1,012 in 1989	818 in 1994
70 in 1985	1,389 in 1990	1,018 in 1995
161 in 1986	1,820 in 1991	and 965 cases in 1996;

and in Davidson County –

187 cases in 1992	207 in 1995
308 in 1993	153 in 1996.
177 in 1994	

8. As of February 28, 1993, there have been 2,521 reported cases of AIDS in Tennessee, with 1,502 deaths being reported. Of those 2,521 cases, 2,340 were males and 181 were females.

9. The number of cases of early syphilis in the United States has risen with

33,613 cases reported in 1982
32,698 in 1983
28,607 in 1984
27,131 in 1985
27,883 in 1986
35,147 in 1987
40,117 in 1988
44,540 in 1989
45,200 in 1990

10. The number of cases of early syphilis in Tennessee has grown with

1,150 in 1982
1,013 in 1983
1,014 in 1984
1,168 in 1985
1,160 in 1986
1,330 in 1987
1,910 in 1988
2,766 in 1989
1,989 in 1990
2,011 in 1991
2,786 in 1992
2572 in 1993
2312 in 1994
2,035 in 1995
and 1,807 in 1996

and in Davidson County syphilis cases reported annually have risen with 101 cases in 1982 –

104 in 1983
86 in 1984
52 in 1985
87 in 1986
173 in 1987
130 in 1988
211 in 1989
515 in 1990
437 in 1991
388 in 1992
149 in 1993
100 in 1994
194 in 1995
292 in 1996

11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with 960,633 civilian cases reported in 1982 –

900,435 in 1983
878,556 in 1984
911,419 in 1985
900,868 in 1986
780,905 in 1987
719,536 in 1988
733,151 in 1989
and 611,932 through November 1990;

and in Tennessee –

32,444 in 1982	23,740 in 1987	15,197 in 1994
30,896 in 1983	19,336 in 1988	13,894 in 1995
30,749 in 1984	19,557 in 1989	11,710 in 1996
32,110 in 1985	56,763 through	
26,455 in 1986	December 1992	
	14,285 in 1993	

12. The number of cases of gonorrhea reported annually in Davidson County remains at a high level, with –

5,325 in 1982	3,846 in 1987	2,390 in 1992
4,744 in 1983	3,815 in 1988	2,388 in 1993
5,294 in 1984	3,409 in 1989	3110 in 1994
5,202 in 1985	2,966 in 1990	2,622 in 1995
4,731 in 1986	2,701 in 1991	2,033 in 1996.

13. The Surgeon-General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

14. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

15. According to the best scientific evidence, numerous other diseases and infestations, including chlamydia, pelvic inflammatory disease, chancroid, herpes, hepatitis B, lympho-granuloma venereum, granuloma inguinale, genital warts, trichomomasis, scabies, pediculosis, amebiasis, giardiasis, and others are transmitted by sexual acts.

16. Conditions in some adult entertainment establishments are unsanitary and unhealthy, in part, because

the activities conducted there are unhealthy, and in part, because the owners and operators of the facilities fail to regulate the unhealthy and unsanitary activities and fail to maintain the facilities in a sanitary and healthy condition.

17. The United States Center for Disease Control has issued universal precautions, including housekeeping and disinfection guidelines, for the prevention of transmission of the HIV virus and other diseases. These guidelines should be followed anytime there is the potential for exposure to blood and other body fluids.

18. Staff members of the police and health departments have observed semen, blood, fecal matter and urine within the public areas of adult entertainment establishments in Davidson County. These unhealthy conditions are worse in areas within adult entertainment establishments where persons view sexually oriented films, sexually oriented movies, adult videos or witness sexually oriented live entertainment.

19 Permitting entertainers to be in close contact with patrons initiates the exchange of money which may reasonably be expected to serve as an opportunity to solicit for and an inducement to agree to unprotected and/or illegal sexual activity, including prostitution and thus poses a threat to both groups by promoting the spread of communicable diseases, and encouraging crime.

20. When the previously described activities characteristic of adult entertainment establishments are present within Davidson County, Tennessee, other activities which are illegal or unhealthy tend to accompany them, concentrate around them and be aggravated by them. Such other activities include, but are not limited to, prostitution,

pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and possession, distribution and transportation of obscene materials.

21. The findings noted in paragraphs 1 through 20 raise substantial governmental concerns.

22. Adult entertainment establishments should be reasonably regulated in order to protect those substantial governmental concerns.

23. A reasonable licensure procedure is an appropriate and effective mechanism to place the burden of that reasonable regulation on the owners and operators of adult entertainment establishments. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operator to see that the adult entertainment establishment is run in a manner that is consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of Davidson County, Tennessee. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment establishments, fully in possession and control of the premises and the activities occurring therein.

24. Removal of doors on booths – wherein patrons view sexually oriented movies, sexually oriented films, adult videos, or sexually oriented live entertainment – and requiring sufficient lighting in premises with booths advances the substantial governmental interest of curbing the illegal and unsanitary sexual activity occurring at adult entertainment establishments

25 The prevention of sexual contact between patrons and employees at adult entertainment establishments is unrelated to the suppression of free expression, but serves to address the concerns raised in the findings contained herein.

26. Prohibiting dancers and patrons from engaging in sexual fondling and caressing in adult theaters or adult cabarets would reduce the opportunity for prostitution and thus should deter prostitution and other crimes of a sexual nature.

27. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of an adult entertainment establishment is substantially related to the significant governmental interest of preventing the spread of sexually-transmitted diseases and reducing or eliminating the criminal activity associated with adult entertainment establishments.

28 It is desirable in the prevention of the spread of communicable diseases and in the investigation of criminal activity, to obtain a limited amount of information regarding certain operators and employees who either engage in the conduct which this ordinance is designed to prevent or are likely to be witnesses to such activity.

29. A substantial rational relationship between adult entertainment establishments and sexually related crimes establishes a compelling justification for barring those persons who have committed crimes from the management of such businesses.

30 The fact that an applicant for an adult use license has been convicted of a sexually-related crime leads to a

rational inference that the applicant is more likely to engage in conduct in contravention of this ordinance.

31. The barring of such individuals from management of adult uses for a period of years serves as a deterrent to and prevents the conduct which leads to the transmission of sexually transmitted diseases and to the promotion of that criminal activity associated with adult uses.

32. The general welfare, health, and safety of the citizens of Metropolitan Nashville and Davidson County will be promoted by the enactment of this ordinance.

SECTION 2: Title 6 of the Code of Laws of The Metropolitan Government of Nashville and Davidson County is amended by adding a new Chapter 6.54.

6.54 Licensing and Regulation of Adult Business:

6.54.010 Definitions.

A. Definitions

For the purpose of this chapter, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

1. *Adult entertainment* means the regular presentation, for a fee or incidentally to another service, of material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein.

2. *Adult entertainment establishment* means any commercial establishment – including but

not limited to: "adult bookstore", "adult video store", "adult theater", "adult nightclub", sexual encounter center, massage parlor, rap parlor, lingerie modeling, or sauna – which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein. Adult entertainment establishment further means any commercial establishment to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing sexually oriented motion pictures, sexually-oriented movies, sexually oriented films, adult videos, or wherein an entertainer provides sexually oriented entertainment to a member of the public, a patron or a member.

(a) *Adult bookstore* means an establishment having any of its stock and trade in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation of the patrons therein, or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, adult videos, sexual y oriented films, or sexually oriented live entertainment, for observation by patrons therein.

(b) *Sexually oriented* means any exhibition of any motion pictures, films, videos, or live performance, display or dance of any type, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers which has a significant or substantial portion of such performance any actual or simulated performance of "specified sexual activities" or exhibition and viewing of "specified anatomical areas".

(c) *Adult theater* means an enclosed building regularly used for presenting films, motion pictures, video cassettes, slides, or other photographic reproductions or other material depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined below, for observation by patrons therein.

(d) *Adult nightclub* means a theater, concert hall, auditorium, nightclub, bar, restaurant, or similar commercial establishment which regularly features live performances that are characterized by any actual or simulated performance of "specified sexual activities" or the exposure of "specified anatomical areas," as defined below.

(e) *Adult video store* means a commercial establishment having any stock in "adult videos" – as defined below – which are rented or sold and presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "adult videos", or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical

areas" as defined below for observation by patrons therein.

(f) *Adult videos* means a video, CD, laser disk, or similar medium with a cover that depicts "specified sexual activities" or "specified anatomical areas" or a transparent or less than opaque cover through which "specified sexual activities" or "specified anatomical areas" can be viewed.

3. *Aggravated rape* as defined in The Tennessee Code Annotated § 39-15-502.

4. *Aggravated sexual battery* as defined in The Tennessee Code Annotated § 39-15-504.

5 *Employee* means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult entertainment establishment.

6 *Entertainer* means any person who provides live entertainment within an adult entertainment establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

7. *Indecent exposure* as defined in The Tennessee Code Annotated § 39-15-511.

8. *Location* means a single site for which only one use and occupancy permit would be required

9 *The Metropolitan Area* – General services district of the Metropolitan Government of Nashville and Davidson County

10. *The Metropolitan Council* means the legislative body of The Metropolitan Government of Nashville and Davidson County, Tennessee

11. *Obscenity* as defined in The Tennessee Code Annotated § 39-17-901(10) through (14).

12. *Operator* means any person, partnership, or corporation operating, conducting or maintaining an adult entertainment establishment.

13. *Prostitution* as defined in The Tennessee Code Annotated § 39-13-512

14. *Patronizing prostitution* as defined in The Tennessee Code Annotated § 39-15-13-512.

15 *Promoting prostitution* as defined in The Tennessee Code Annotated § 39-15-13-512.

16 *Rape* as defined in The Tennessee Code Annotated § 39-15-503.

17. *Rape of a child* as defined in The Tennessee Code Annotated § 39-15-522

18. *Sexual battery* as defined in The Tennessee Code Annotated § 39-15-505.

19. *Sexual exploitation of a minor* as defined in The Tennessee Code Annotated § 39-17-1003, § 39-17-1004, and § 39-17-1005.

20. *Specified sexual activities* mean

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

21. *Specified anatomical areas* mean:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region,

(ii) Buttocks;

(iii) Female breasts below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely opaquely covered

22. *Statutory rape* as defined to The Tennessee Code Annotated § 39-15-506.

6.54.020 Adult Entertainment Licensing Board

A. Establishment

An adult entertainment licensing board is hereby created and designated the metropolitan adult entertainment licensing board (herein "board").

B. Membership – Terms

1. The board shall consist of five members, who shall have been residents of the metropolitan area for not less than one year, and who shall continue to be eligible so long as they reside in the metropolitan area, to be appointed by the mayor and confirmed by a majority vote of the metropolitan council.

2. At least one of the five members shall be an attorney, and one of the five members shall be a health provider.

3. Of the five members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of three years, and one shall be appointed for a term of four years. Thereafter, each member shall be appointed for a term of four years, and shall serve until his/her successor is appointed. Any vacancy other than the expiration of terms shall be filled for the un-expired term

C. Election of officers – Term

The board shall organize by the election of a chair and a vice-chair, who shall serve for a period of one year or until a successor shall have been chosen.

D. Meetings – Quorum required – Minutes and transcript

1. The board shall hold two regular meetings each month at a time fixed by the board, and may hold such special meetings as may be necessary

2. The attendance of at least a majority of the members of the board, not including unfilled positions, shall be required to constitute a quorum for the purpose of transacting business.

3. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a license and/or a permit. The concurring vote of a majority of the members present and voting shall be necessary for the granting, revoking, suspending or any other action involving licenses or permits.

4 No transcript of the proceedings had before the board shall be in any form other than narrative

unless the board shall have been requested to provide for an exact copy of the testimony by an interested party at least twenty-four hours prior to a board meeting. The cost of an exact copy shall be borne by the person requesting the same.

E. Powers and duties.

1. The board shall have jurisdiction over the licensing, regulating and controlling of all adult entertainment establishments as provided herein, located in the metropolitan area.

2 The board may promulgate such bylaws, rules and regulations not inconsistent with state law, the metropolitan charter, or any ordinance, as it deems appropriate for the conducting of its business.

3. The board has the authority to subpoena witnesses to testify before the board

F. Inspectors – Authority.

The board is empowered to employ suitable person(s) as inspectors which inspectors shall not hold any service status. The board shall prescribe the duties of such inspectors so as to enforce the applicable provisions of this title.

G Procedures for Hearings

This section shall apply to all hearings by the board including but not limited to hearings for revocation suspension, or denial of a license/permit.

1 Upon receiving a written request for a hearing, the board shall send the party requesting the hearing a notice stating the time and place of the hearing and the right to be represented by counsel.

2. At the hearing, the party requesting the hearing shall appear on his/her own behalf or be represented by counsel. All witnesses shall be sworn. The chair shall allow the party requesting the hearing to present witnesses on his/her own behalf and to cross-examine all witnesses testifying against him/her.

3. All decisions of the board shall be in writing, setting forth the findings of the board, and shall be signed by the chair or vice-chair Any decisions of the board to deny a renewal, suspend, or revoke a license/permit shall not take effect earlier than ten (10) days after the date the decision was rendered to allow the effected party adequate time to seek judicial review.

4. Minutes shall be kept of all proceedings before the board in permanent form and a record shall be kept of the actions of the board with respect to all hearings.

5 A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. The record must be maintained by the board for a period of ninety days Such record or any part thereof shall be transcribed at the request of any party at such party's expense.

6. Any party desiring a court reporter to be present at the hearing must arrange for the court reporter to be present.

6.54.030 License Required.

A Except as provided in subsection F below, from and after the effective date of this ordinance, no adult entertainment establishment shall be operated or maintained within the metropolitan area without first obtaining a license to operate issued by the board.

B. Any person, partnership, or corporation which desires to operate more than one (1) adult entertainment establishment must have a license for each establishment

C. Only one license nay be issued for each adult entertainment establishment location.

D. No license or interest in a license may be transferred to any person, partnership or corporation.

E. It shall be unlawful for any entertainer or operator to work in or about, or to perform any service directly related to the operation of any unlicensed adult entertainment establishment. It shall be unlawful for any employee to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed adult entertainment establishment while adult entertainment is being presented.

F All existing adult entertainment establishments at the time of the passage of this ordinance must submit an application for a license within one hundred twenty (120) days of the effective date of this ordinance. If a license is not applied for within said one-hundred-twenty day period, then such existing adult entertainment establishment shall cease operations.

6.54.040 Application for license.

A. Application

1. Any person, partnership, corporation or any other entity desiring to secure a license shall make application to the board. The applicant shall file the original application with six copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be

distributed promptly by the board to: the police department, the department of codes administration, the health department, the fire department, and to the applicant.

2 Application forms shall be available at the office of the board

3 The application form shall include all the information indicated in subsection 6.54.040(5)(a) through (l).

4. The following persons must obtain a license: any partner of a partnership who will participate in the day to day operation of the business, any officer or director of a corporate applicant, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will participate in the day to day operation of the business.

5. The applicant shall furnish the following information under oath:

(a) Name and address, including all aliases (business address is sufficient);

(b) Proof that the individual is at least eighteen (18) years of age;

(c) All residential addresses of the applicant for the past three (3) years (for the purpose of facilitating the police investigation into the applicants criminal background);

(d) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application (for the purpose of facilitating the police investigation into the applicants criminal background);

(e) Whether the applicant previously operated in this or any other county, city or state under an adult entertainment establishment license or similar business license. Whether the applicant has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;

(f) All violations, convictions, or any or pleas of *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crimes of a sexual nature, or any crime involving moral turpitude.

(g) All citations issued and sustained by a court within the past two years for violations of any provisions of the metropolitan zoning code applicable to adult entertainment establishments, including but not limited to sections 17.12.080(29), 17.60.020, 17.64.270.

(h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant. (for the purpose of facilitating the police investigation into the applicants criminal background)

(i) The address of the adult entertainment establishment to be operated by the applicant.

(j) If the applicant is a corporation the application shall specify the name of the corporation the date and state of incorporation the name and address of the registered agent and the name and

address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day to day operation of the business.

(k) If the applicant is a partnership, joint venture, or any other type of business the application shall specify the name and address of all persons who will be involved in the day to day operation of the business

(l) A statement by the applicant that he/she is familiar with the provisions of this ordinance and is in compliance with them.

6 If the applicant intends to have booth, stalls, cubicles, or rooms on the premises for the purpose of viewing sexually oriented movies, sexually oriented films, or adult videos, or sexually oriented live exhibitions, then along with the application, the applicant shall provide the board with his/her application a diagram, drawn to scale, of the premises including but not limited to the location and layout of all booths, stalls, cubicles, or rooms and the location of the clerk/managers stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared

B. Inspections.

1. The police department, codes department, fire department, and health department shall, upon receipt of a copy of the application, inspect the premises to insure that the establishment complies with the metropolitan code including the applicable zoning ordinances, fire code statutes, ordinances and regulations, and the health code statutes, ordinances and regulations.

2. If a diagram is required to be submitted under 6.54.040(A)(6), then the code inspector shall confirm the layout of the booths, stalls, cubicles, or rooms complies with the submitted diagram and the requirements set out in 6.54.050(A)

3. The police department, codes department, fire department, and health department shall complete their respective inspections and shall communicate the results of their respective inspections to the board in writing within thirty (30) days of receipt of the application. The writing shall end with one of the following statements:

The location at _____
complies with the relevant and applicable code sections and applicable rules and regulations of the board.

The location at _____
does not comply with the relevant and applicable code sections or does not comply with the relevant and applicable rules and regulations of the board. It is in violation of the following provisions *Section numbers of code violations*

4. All ongoing businesses shall be inspected in accordance with 6.54.040(B)(1) and (2) regardless of whether the business already has a valid use and occupancy permit.

5. If the building/structure has a valid use and occupancy permit, the applicant shall provide the board with a copy of the valid use and occupancy permit which shall be made part of the file.

C. Board Action on Inspection Results.

1. Within twenty (20) days of receiving the results of the investigation conducted by the police

department, codes department, fire department, and health department the board will meet and determine if the applicant is in compliance with the applicable statutes, ordinances, and regulations. If the board determines that the applicant is in compliance with the applicable statutes, ordinances, and regulations, including but not limited to the zoning code, and the applicant has not committed any of the crimes listed in 6.54.040(A)(5)(f), is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the license.

2. Any applicant convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below. Such denial and the reason for the denial shall be mailed to the applicant within ten (10) days of receiving the results of the investigation. The applicant may re-apply to the board once the time period has expired

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. If it is determined by the board, using the application and the investigation information, that the applicant has violated the provisions of the zoning code applicable to adult entertainment within the past two years, then the applicant is ineligible for a license for one (1) year from the date the citation was sustained. A violation of the zoning code shall be evidenced by a citation which has been sustained by any court in the metropolitan area.

4. If a diagram is required under 6.54.040(A)(6) and based on the code investigation, the board determines that the actual structure does not comply with 6 54 050(A) or the submitted diagram, then the applicant is not in compliance with this code section and the license shall be denied until the applicant is in compliance.

5 If in the course of the investigation it is discovered any false or misleading statement or information was given on the application, or material facts were omitted from the application, the board shall deny the application.

(a) The applicant shall be ineligible to receive a permit for one (1) year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.040(A)(5)(f).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license

until all persons who will participate in the day to day operation of the business are eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6 54.040(A)(5)(f), then the applicant shall not be eligible to receive a permit until the time period described in 6 54.040(C)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer

6. Within twenty (20) days of receiving the results of the investigation conducted by the police department, codes department, fire department, and health department, if the board shall determine that the applicant is not in compliance with the applicable statutes, ordinances, and regulations, the applicant shall be notified in writing that the license is denied for failing to comply with applicable statutes, ordinances, and regulations This notice shall specify the violation If the applicant can come into compliance as described m subsections 6.54.040(D) the denial shall not take effect The notice shall also specify that the applicant may request a hearing within ten (10) days as described in 6.54.040(E), cure the violation within fifteen (15) days and request re-inspection or request an extension of time as described in 6.54.040(D.).

7 The board has the discretion to hold any and all applications for further investigation if: (a) the initial investigation indicates a need for additional information, or (b) the initial investigation requires investigation into out of state records; or (c) verification of out of state employment is needed. Such additional investigation shall not exceed an additional

thirty (30) days, from the end of the initial twenty (20) days specified in 6.54.040(C)(6), unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied in accordance with this section.

8. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing of the reasons for such action.

9. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance, shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection 6.54.040(C)(7).

10. No license shall be issued unless the police department has investigated the applicants criminal history by entering the information included on the application into the appropriate computer database or otherwise obtaining the information. The results of that investigation shall be filed in writing (this may be the print-out given by the computer database) with the board no later than thirty (30) days after the date application was received by the police department. This thirty (30) day period is the same thirty (30) days described in 6.54.040(B)(3).

D. Extensions of Time for the Applicant

1. If the license is denied under subsection 6.54.040(C)(6), the applicant may re-institute his/her

application by notifying the board in writing that he/she has come into compliance and requests re-inspection

(a) The applicant has fifteen (15) days from the mailing of the notice, given in 6 54.040(C)(6) to cure the violation and notify the board. If the violations have been corrected within the fifteen (15) day period, the owner has the responsibility to contact the board.

(b) The board has five days to notify the appropriate inspector that the applicant believes he/she has come into compliance

(c) Upon notification by the board the appropriate inspector shall return to the location for re-inspection and shall submit another written report as indicated in subsection 6.54.040(B)(3). The inspector has ten (10) days from the date he/she was notified by the board to re-inspect the premises and inform the board as to whether the applicant has come into compliance.

(d) Based on the report of the inspector(s), the board shall determine if the applicant has come into compliance and if so the board shall issue the license at the next regular meeting.

(e) If the owner fails to either contact the appropriate inspector to report that the code violations have been corrected or if the code violations have not been corrected then the application is denied in accordance with 6 54.040(C)(6)

2. If the process of curing the violation requires more time than that provided in 6 54.040(D)(1), the applicant may request an extension from the board If

the applicant does not make such a request in the time allotted the application is denied in accorda. ce with 6.54 040(C)(6) and 6.54 040(D)(3).

(a) The request for an extension must be made in writing within fifteen (15) days from the mailing of the notice given in 6.54.040(C)(6).

(b) The board shall hear the applicants request for an extension at the next regular meeting.

(c) The hearing on the extension shall follow the same rules as set out in 6.54.020(G) except that the decision of the board shall grant or deny the extension and a decision to grant an extension shall take effect immediately.

(d) An extension shall only be granted when board decides that the applicant has demonstrated a good faith effort to make the necessary repairs or cure the violation(s) in a timely manner.

3. If the applicant fails to follow the procedure set out in 6.54.040(D)(1) including the time limit or fails to get an extension within the time allowed and in accordance with 6.54.040(D)(2) then the application is denied and the applicant must reapply to obtain a license. Following the procedure set out in 6.54.040(D)(1) or 6.54.040(D)(2) requires no additional fees. Once the deadlines to cure the violation or ask for an extension of time have passed, the notice sent in 6.54.040(C)(6) shall be treated as a denial of the license.

E. Denial of the License Application

1. When an application is denied, the applicant has the right to request a hearing within ten (10) days of notification.

(a) The request shall be in writing and filed with the board within ten (10) days of notification of the denial.

(b) Once the request is received by the board, the board shall schedule a hearing at the next regular meeting of the board.

(c) At the hearing, the applicant may present evidence as to why his/her license should not be denied

(d) The board shall hear all relevant evidence regarding the license application and the denial and shall affirm or reject the denial of the application at the hearing and in writing stating the reasoning for the boards decision. Denial of the application can be immediately appealed by the applicant to the Chancery Court of Davidson County. The metropolitan department of law may initiate an action for a declaratory judgment

(e) The denial of the license shall be mailed by US mail within ten (10) days to the address of the applicant as listed on the application.

(f) Failure on the part of the applicant to request a hearing within the time limit provided is a waiver of the right to a hearing by the board. This waiver has no effect whatsoever on the applicants right to appeal any denial to the Chancery Court of Davidson County.

2. Any denial of an application for a license may be immediately appealed to the Chancery Court of Davidson County The metropolitan department of law may institute proceedings for a declaratory judgment

6.54.050 Standards for issuance of license.

A. Physical Layout of Adult Entertainment Establishment.

1. Any adult entertainment establishment having available for customers, patrons or members any booth, room or cubicle for the private viewing of any adult entertainment, including but not limited to sexually oriented films, sexually oriented movies, adult videos or sexually oriented live exhibitions, shall submit a diagram under 6.54.040(A)(6) and the diagram submitted must be substantially the same as the structure observed by the inspector. Further, the structure and the diagram shall comply with the following requirements:

2. Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment and shall be unobstructed by any door, gate, lock or other control-type devices.

3. Construction. Every booth, room or cubicle shall meet the following construction requirements.

(a) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any nonpublic areas by a solid or opaque wall;

(b) Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same,

(c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleanable;

(d) The floor must be light colored, nonabsorbent, smooth textured and easily cleanable; and

(e) The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten (10) foot candles at all limes as measured from the floor.

4. Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

5. The provisions enunciated in subsections 1 through 3 of this section shall not apply to bathrooms unless the bathroom contains any equipment which would allow the viewing of sexually oriented films, sexually oriented movies, adult videos or sexually oriented live exhibitions.

B. The applicant.

1. To receive a license to operate an adult entertainment establishment, an applicant must meet the following standards.

(a) If the applicant is an individual the applicant shall be at least eighteen (18) years of age

(b) If the applicant is a corporation all officers directors and stockholders required to be named under section 6.54.040(A)(5)(j) shall be at least eighteen (18) years of age;

(c) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest all

persons having a financial interest in the business and who have the ability to control or be involved in the day to day operation of the business shall be at least eighteen (18) years of age.

2 No individual applicant, no officer, director or stockholder required to be named under Section 6.54.040(A)(5)(j) and no partners required to be named under Section 6.54.040(A)(5)(k) who shall have been convicted of or have plead *nolo contendere* to any crime of rape. aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be eligible to receive a permit for the time period described below.

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application.

(a) If the applicant gave any false or misleading information or omitted any material facts, than the applicant shall be ineligible to receive a license for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.050(B)(2).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6.54.050(B)(2) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.050(B)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(d) If the misleading statements or omissions referred to violations of the zoning code then the applicant shall not be eligible to receive a permit until the time period described in 6.54 050(B)(4) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

4. No applicant shall have been found to have previously violated chapter 6.54 or violated the metropolitan zoning code applicable to adult entertainment

establishments, including but not limited to sections 17 12.080(29), 17.60.020, 17 64.270 as evidenced by citations issued and sustained by a court within one (1) year immediately preceding the date of the application. If such violations exist the applicant shall be ineligible for a license for one (1) year from the date the citation was sustained

6.54.060 Permit Required.

In addition to the license requirements previously set forth for owners and operators of adult entertainment establishments no person shall be an entertainer in an adult entertainment establishment without first obtaining a valid permit issued by the board

6.54.070 Application for permit.

A. Application.

1. Any person desiring to secure a permit shall make application to the board. The original application with four copies shall be filed with and dated by the board. A copy of the application shall be distributed promptly by the board to the metropolitan nashville police department, and to the applicant.

2. The application for a permit shall be upon a form provided by the board. An applicant for a permit shall furnish the following information under oath:

(a) Name and address including all aliases,

(b) Written proof that the individual is at least eighteen (18) years of age,

(c) All residential addresses of the applicant for the past three (3) years (for the purpose

of facilitating the police investigation into the applicants criminal background);

(d) The applicants height, weight, color of eyes, and hair(for the purpose of facilitating the police investigation into the applicants criminal background);

(e) The business, occupation, or employment of the applicant for five (5) years immediately preceding the date of the application (for the purpose of facilitating the police investigation into the applicants criminal background);

(f) Whether the applicant while previously operating in this or any other city or state under an adult entertainment establishment permit or similar business for whom applicant was employed or associated at the time has ever had such a permit revoked or suspended the reason therefor and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

(g) Whether the applicant has ever been convicted of or pleaded *nolo contendere* to any and all crimes of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction;

(h) Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant (for the purpose of facilitating the police investigation into the applicants criminal background); and

(i) A statement by the applicant that he/she is familiar with the provisions of this ordinance and is in compliance with them.

B. Standards for Issuance of Permit.

1 To receive a permit as an entertainer, an applicant must meet the following standards:

(a) The applicant shall be at least eighteen (18) years of age;

(b) An applicant who has been convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below.

(i) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(ii) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(iii) The time is computed from the date of the application to the date of the conviction,

plea, or release from confinement based on the conviction.

(c) The applicant shall not have given any false or misleading information on the application, omitted any material facts from the application.

(i) If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6 54.070(A)(2)(g)

(ii) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer

(iii) If the misleading statements or omissions referred to any of the crimes listed on 6.54.070(A)(2)(g) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.070(B)(1)(b)(i) through (iii) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

(d) The applicant shall not have been found to violate any provision of chapter 6.54 within one (1) year immediately preceding the date of the application

C Investigation.

The police department shall investigate the criminal history of the applicant and submit this history in writing (this may be the print-out generated by a computer database) to the board within thirty (30) days of receipt of the application by the police department.

D Board Action Based on the Investigation.

1. The board shall convene to review the application and the police investigation report within fifteen (15) days of receiving the results of the investigation conducted by the police department. If the board determines, based on the application and the report of the police department that the applicant has not committed any of the crimes listed in 6.54 070(A)(2)(g), is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application the board shall grant the permit to the applicant at that meeting. Information regarding prior residence shall never be the basis for the denial of a permit.

2. Any applicant convicted of or who pleaded *nolo contendere* to any crime of rape, aggravated sexual assault, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, obscenity, or other similar crime of a sexual nature, or any crime involving moral turpitude in any jurisdiction shall be ineligible to receive a permit for the time period described below. Such denial and the reason for the denial shall be mailed to the applicant with in ten (10) days of the meeting described above in 6.54.070(D)(1). The applicant may re-apply to the

board once the time period described below has expired.

(a) If the conviction or plea was for a misdemeanor violation then the applicant shall be ineligible to receive a permit for two (2) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(b) If the conviction or plea was for a felony violation then the applicant shall be ineligible to receive a permit for five (5) years from the date of the conviction, plea, or release from confinement imposed for the conviction whichever is later.

(c) The time is computed from the date of the application to the date of the conviction, plea, or release from confinement based on the conviction.

3. If in the course of the investigation it is discovered any false or misleading statements or information was given on the application, or material facts were omitted from the application, the board shall deny the application.

(a) The applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or any of the crimes listed in 6.54.070(A)(2)(g).

(b) If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application

which contained the misleading statements or omissions whichever is longer.

(c) If the misleading statements or omissions referred to any of the crimes listed in 6.54.070(A)(2)(g) then the applicant shall not be eligible to receive a permit until the time period described in 6.54.070(D)(2)(a) through (c) has expired or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is longer.

4. The board may hold any and all applications for further investigation if (a) the initial investigation indicates a need for additional information; or (b) the initial investigation requires investigation into out-of-state records, or (c) verification of out of state employment is needed Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied in accordance with this section.

5. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing of the reasons for such action.

6 When an application is denied, the applicant has the right to requests a hearing within ten (10) days of receipt of notification of the denial.

(a) The request shall be in writing and filed with the board within ten (10) days of receipt of notification of the denial.

(b) Once the request is received by the board, the hearing will be held at the next regular meeting of the board.

(c) At the hearing, the applicant may present evidence as to why his/her permit should not be denied.

(d) The board shall hear evidence on the issues and shall affirm or reject the denial of an application at the hearing and in writing stating the reasoning for the boards decision.

(e) The denial of the permit shall be mailed by US mail within ten (10) days to the address of the applicant as listed on the application.

(f) Failure on the part of the applicant to request a hearing within the time limit provided is a waiver of the right to a hearing by the board. This waiver has no effect whatsoever on the applicants right to appeal any denial to the Chancery Court of Davidson County.

7. Any denial of the application for a permit may be immediately appealed to the Chancery Court of Davidson County. The metropolitan department of law may also initiate proceedings for a declaratory judgment in the Chancery Court of Davidson County.

8. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his/her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he/she is ineligible for such permit and shall be grounds for denial thereof by the board. This provision in no way requires the applicant to agree to any extensions beyond the extension described in 6.54.070(D)(4).

6.54.080 Fees.

A. A license fee of five hundred dollars ($500.00) shall be submitted with the application for a license. If the application is denied one-half (½) of the fee shall be returned.

B. A permit fee of one hundred dollars ($100.00) shall be submitted with the application for a permit. If the application is denied one-half (½) of the fee shall be returned.

6.54.090 Display of license or permit.

A. The license shall be displayed in a conspicuous public place in the adult entertainment establishment.

B The permit shall be carried by or be accessible to the entertainer during that entertainer's working hours and shall be displayed upon request of any customer, any member of the police department, or any person designated by the board

C. If the business for which a license was issued ceases to exist in that a majority of the business assets have been liquidated, or the business has closed and ceased operations, then the license shall be turned into the board.

6.54.100 Renewal of license or permit.

A. Every license/permit issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance unless sooner revoked and must be renewed before operation is allowed in the following year

B. Any operator desiring to renew a license or any entertainer desiring to renew a permit shall make application to the board The application for renewal must be filed not later than sixty days (60) days before the license/permit expires. The original application for renewal plus six copies shall be filed and dated by the board.

C. The board shall send a copy to the same departments who would receive a copy of the initial application. These departments shall process the application in the same manner and within the same time limits which apply to the initial application

D. The board shall provide the applicant with a copy of the application from the previous year and a new application form.

E The renewal form shall be the same form described in 6.54.040(A) for a license and 6.54.070(A) for a permit except as indicated below in subsection 6.54.100(H).

F. For a renewal the applicant may fill out the new form in its entirety or fill in any information which has changed over the year and is now different than the information indicated on the application from the prior year.

G. If the applicant chooses to only include information concerning items which have changed he/she will swear to the accuracy of both the information contained in the renewal form and the information attached from the prior year.

H. The renewal application form shall be the same form described in 6.54.040(A) for a license or 6.54.070(A) for a permit except the final line shall state:

> *I swear the information I have given in the application from 199_ is still accurate and any facts or*

circumstances which have changed are indicated in this application for a renewal of the license/ permit

_____

signature of applicant

I. A license renewal fee of five hundred dollars ($500.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars ($100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (½) of the fee collected shall be returned

J. A permit renewal fee of one hundred dollars ($100.00) shall be submitted with the application for renewal. In addition to said renewal fee, a late penalty of fifty dollars ($50.00) shall be assessed against the applicant who files for renewal less than sixty (60) days before the license expires. If the application is denied, one-half (½) of the fee shall be returned.

K The application for a renewal is subject to the same rules and limitations including the time limits described for the initial application including subsections 6 54.040, 6.54 050, 6.54.070, and 6.54.140 (causes for revoking a license/permit) Giving false or misleading information or omitting material information on a renewal application is grounds for denying the renewal of the license/permit.

L. Denial of an application to renew a license/permit can be appealed to the board

1. A hearing by the board shall be requested, by the applicant or the applicants agent, within ten days of the denial for the renewal.

2 The board shall hold the hearing at the next regular meeting where the applicant will be given an opportunity to testify and cross examine all witnesses.

3. The previous license/permit shall continue to be valid until the board has rendered a decision and the ten days required in subsection 6.54.020(G)(3) have passed.

M. The denial of any renewal for a license/permit may be appealed to the Chancery Court of Davidson County by the applicant. The metropolitan department of law may initiate proceedings for a declaratory judgment in the Chancery Court for Davidson County.

6.54.110 Hours of operation.

A. All adult entertainment establishments shall be closed between the hours of 2:00 a.m. and 6:00 a.m. Monday through Saturday and between the hours of 3:00 a.m. and 12:00 noon on Sundays.

B. All public areas of every adult entertainment establishments shall be open to inspection at any time during normal business hours by the following departments: police, codes, fire, and health.

6.54.120 Responsibilities of the operator.

A. An operator is responsible for the conduct of all entertainers while on the licensed premises and any act or omission of any entertainer constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed subject to the limit described in subsection 6.54.140(11)

B There shall be posted and conspicuously displayed in the common areas of each adult entertainment establishment a list of any and all entertainment provided on the premises Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing sexually oriented motion pictures, sexually oriented films, sexually oriented movies, sexually oriented live entertainment or adult videos shall be considered entertainment.

C No employee of an adult entertainment establishment shall allow any minor to loiter around or to frequent an adult entertainment establishment or to allow any minor to view adult entertainment as deemed herein.

D. Every adult entertainment establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises having at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. Further any wall forming any portion of the booths, cubicles, rooms or stalls shall be solid and without any openings, extended from the floor to a height of not less than six feet. This section shall be construed in conjunction with 6.54 050(A)

E It shall be unlawful to install enclosed booths, cubicles, rooms or stalls for the purpose of secluded viewing of sexually oriented motion pictures, sexually oriented movies, sexually oriented films or adult videos or sexually oriented live entertainment

F The operator shall be responsible for and shall provide that any booth, cubicle, room, stall or area used for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films or adult videos or sexually oriented live entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

G. No operator, entertainer of an adult entertainment establishment shall demand or collect all or any portion of a fee for entertainment before its completion. This provision does not apply to any fee charged at the door for admittance to the premises, or any fee charged for food or beverages.

H. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult Entertainment Establishment is regulated by The Metropolitan Code of Nashville and Davidson County (Code Section #s). *Entertainers Are*

a Not permitted to engage in any type of sexual conduct;

b Not permitted to demand or collect all or any portion of a fee for entertainment before its completion

I. It shall be the duty of the operator, all entertainers and employees, on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, to ensure that the line of sight and view area between the main floor area and any stalls, booths, cubicles, or rooms remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that

any patron is permitted access to any room, booth, stall, or cubicle.

J. It shall be the duty of the operator, all entertainers and employees on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

K No operator, entertainer or employee on the premises for furthering the business not including independent contractors on the premises for repairs or construction, shall allow openings of any kind to exist between viewing rooms, booths, stalls or cubicles, and no person shall make or attempt to make an opening of any kind between viewing rooms, booths, stalls or cubicles.

L. The operator or his/her agent shall, during each business day, regularly inspect the walls between the viewing rooms, booths, stalls or cubicles to determine if any openings or holes exist. If such openings exist it is the duty of the operator to repair the damage as soon as possible. No patron shall be permitted access to a viewing room, booth, stall or cubicle where an opening or a hole exists. It shall be the duty of the operator to ensure those rooms are unoccupied by patrons until the opening is repaired and covered.

6.54.130 Prohibitions and unlawful sexual acts.

A. No operator, entertainer, or employee of an adult entertainment establishment shall permit to be performed, offer to perform, perform, or allow customers employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

B No operator, entertainer, or employee shall encourage or permit any person upon the premises to touch caress or fondle the breasts, buttocks, anus, or genitals of any other person

C. No entertainer, employee, or customer shall be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance All performances shall only occur upon a stage at least eighteen inches (18) above the immediate floor level and removed at least six (6) feet from the nearest customer.

6.54.140 Revocation or suspension of license/permit.

A. The board shall revoke a license or permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application,

2. The operator or entertainer becomes ineligible to obtain a license or permit under 6.54.050(B) and 6.54.070(B).

3. Any cost or fee required to be paid by this ordinance is not paid;

4. An operator employs an entertainer who does not have a permit or provides space on the premises whether by lease or otherwise to an independent contractor who performs or works as an entertainer without a permit;

5. Any intoxicating liquor, cereal malt beverage, narcotic, or controlled substance is sold or allowed to be sold on the licensed premises;

6. Any operator employee or entertainer sells, furnishes, gives, displays, or causes to be sold, furnished, given, or displayed to any minor any adult entertainment or sexually oriented material,

7. Any operator, employee, or entertainer denies access to law enforcement personnel during business hours to any portion of the licensed premises wherein adult entertainment is permitted or to any portion of the licensed premises wherein adult material is displayed or sold;

8. Any operator allows continuing violations of the metropolitan code or the rules and regulations of the following departments: health, codes, fire, or zoning, or any violations of this chapter.

9. Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition in accordance with the applicable statutes, ordinances, and regulations of the federal, state, and local governments.

10. The attempted transfer of a license/permit or any interest in a license/permit shall automatically and immediately revoke the license

B. In the case of a first offense by an operator where the conduct was solely that of an entertainer the penalty shall not exceed a suspension of thirty (30) days if the board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

C Any and all other violations of this chapter shall be subject to either a fine or a suspension or both a fine and a suspension.

D The board shall follow the following procedure for revoking or suspending a license or a permit.

1. Before revoking or suspending any license or permit the board shall give the operator or entertainer least ten (10) days written notice of the charges against him/her. In such cases the charges shall be specific and in writing except under 6.54.140(A)(10) above

2. The licensee/permittee shall have the opportunity for a hearing before the board at which time the operator or entertainer may present evidence bearing upon the question of suspension/revocation. The licensee/permittee has fifteen days from the receipt of the notice described above in 6.54.140(D)(1) to notify the board that he/she wishes to have a hearing.

3. The board shall hear all the evidence pertaining to the revocation or suspension at the next regular meeting.

4. If the licensee/permittee fails to request a hearing before the board within the fifteen days described in 6.54.140(D)(2) he/she will have waived the right to a hearing by the board. This has no effect, whatsoever, on the licensee's/permittee's right to appeal any revocation to the Chancery Court of Davidson County.

5 If the licensee/permittee requests a hearing the license/permit shall remain in effect and valid during the appeal to the board until such time as the hearing is held. Further if the

license/permit is suspended or revoked the suspension/revocation shall not go into effect until the minimum ten (10) day waiting period has passed as described in 6.54.020(G)(3).

E. Any operator or entertainer whose license or permit is revoked shall not be eligible to receive a license or permit for one (1) year from the date of revocation

6.54.150 Penalties and prosecutions.

A. Any individual, partnership, or corporation violating any of the provisions of this chapter shall be subject to any of the following penalties:

1. $500 00 for each offense; and/or

2. a suspension of any license/permit for a specified period of time for each offense; or

3. revocation of any license/permit for any conduct listed in subsection 6.54.140.

B. The penalty of suspension may not be combined with revocation A fine alone can be a penalty or it may be combined with a suspension.

C. Each violation of this ordinance shall be considered a separate offense and any continuing violation shall be considered a separate offense for each day of the violation

6.54.160 Remedies.

Any revocation or suspension of a license or a permit or any denial of a license or a permit or any denial to renew a license or a permit under the provisions of this chapter may be immediately appealed to the Chancery Court of Davidson County by the of Davidson County

by the applicant. Any fine levied under the provisions of this section may be immediately appealed to the Chancery Court of Davidson County by the applicant. The metropolitan department of law may institute proceedings for a declaratory judgment in the Chancery Court of Davidson County.

6.54.180 Invalidity of part.

Should any court of competent jurisdiction declare any section, clause, or provision of this ordinance to be unconstitutional, or any other ordinance of the metropolitan government unconstitutional, such decision shall effect only such section, clause, provision, or ordinance so declared unconstitutional, and shall not effect any other section, clause or provision of this ordinance.

SECTION 2: No application for a license or a permit shall be accepted or demanded until August 1, 1997.

SECTION 3: This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO LEGALITY OF FORM AND COMPOSITION:	INTRODUCED BY:
/s/ Shayna Abrams	/s/ [Illegible]
Metropolitan Attorney	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
/s/ [Illegible]	/s/ [Illegible]
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/s/ [Illegible]
/s/ [Illegible]
/s/ [Illegible]
/s/ [Illegible]

APPROVED AS TO
AVAILABILITY OF FUNDS:

MEMBERS OF COUNCIL

/s/ [Illegible]
/s/ [Illegible]

I, being under oath, do certify this is a true and exact copy of Ordinance No 097-796 of The Metropolitan Government of Nashville and Davidson County, Tennessee which passed third and final reading on August 19, 1997, at the meeting of the Metropolitan Council held on that date, and is now recorded in Book No. M59, Page 160.

Witness my hand and the Seal of The Metropolitan Government of Nashville and Davidson County, Tennessee, this 25th day of August, 1997.

/s/ [Illegible]
Metropolitan Clerk

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me, by Marilyn S. Swing, this 25th day of August, 1997.

/s/ [Illegible]
Notary Public

My Commission expires 09/27/97

DUPLICATE

METROPOLITAN COUNTY COUNCIL

Bill No. O97-796

AN ORDINANCE AMENDING TITLE 6 OF THE METROPOLITAN CODE OF LAWS BY ADDING A NEW CHAPTER 6.54, LICENSING AND REGULATION OF ADULT ENTERTAINMENT AND ADULT BUSINESSES.

(Filed May 27, 1997)

Introduced JUN 3 1997

Passed first Reading JUN 3 1997

Referred to BUDGET & FINANCE; CODES; PUBLIC SAFETY; HEALTH, HOSPITALS & SOCIAL SERVICES COMMITTEES

~~Amended~~ DEFERRED JUN 17 1997 AMENDED & DEFERRED INDEFINITELY JUL 15 1997

AMENDED & *Passed second Reading* AUG 7 1997

Referred to _____

Passed third Reading AUG 19 1997

Approved AUG 25 1997

By [Illegible]
Metropolitan Mayor

Departments Notified _____

Advertised _____

Amendment No. 1
To
Bill No. O97-796

Mr. President:

I move to amend Bill No. O97-796 by adding a new sub-paragraph F to Section 6.54.070 to read as follows:

F. The permit carried by the entertainer shall contain only the following information: 1) A photo identification as provided by the applicant. 2) A computer generated number assigned to each applicant, corresponding to the file maintained on each applicant by the adult entertainment licensing board, and 3) The applicant's date of birth as indicated on the application.

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 2
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by deleting the words "August 1" wherein it appears in Section 2,

on page 25, and placing in lieu thereof the words "November 1."

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 3
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 Section 2, by amending Section 6.54.010(A)(2) as follows:

1. Delete the definition of adult bookstore in Section 6.54.010(A)(2)(a) and substitute a new definition as follows:

> (a) *Adult bookstore* means an establishment having a majority of its stock and trade or a majority of its floor space in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, adult videos, sexually oriented films, or sexually oriented live entertainment, for observation by patrons therein.

2. Delete the definition of adult video store in Section 6.54.010(A)(2)(e) and substituting a new definition as follows:

(e) *Adult video score* means a commercial establishment having a majority of its stock or a majority of its floor space dedicated to "adult videos" – as defined below – which are rented or sold or presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "adult videos", or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined below for observation by patrons therein.

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 4
TO
BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by adding the words "on the premises for furthering the business but not including independent contractors on the premises for repairs and construction" after the word "employee" and before ", or customer shall be

permitted" wherein it appears in 6.54.130(C) Section 2.

INTRODUCED BY:

/s/ Chris Ferrell
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 5

TO

ORDINANCE NO. 097-796

Mr. President:

I move to amend Ordinance No. 097-796 as follows:

(1) By amending Section 6.54.110 of the Ordinance by adding a new Subsection (C) as follows:

> "(C) That Subsection (A) shall have no application to any premises within the historically significant area as defined in Section 6.54.130(D)."

(2) By amending Section 6.54.130 of the Ordinance by adding a new Subsection (D) as follows:

> "(D) Subsection (C) shall have no application to any premises wherein the building is less that twenty (20) feet in width and the ceilings support joyces of the premises are no more than 7-1/2 (seven and one-half) feet from the floor and which premises are located in a historically significant area and the business on said premises has been in operation for at least five (5) years.

Historically Significant Area for this purpose shall be defined as follows: That area of downtown Metropolitan Nashville bound by Second Avenue North, Church Street, Fourth Avenue North, and Union Streets."

INTRODUCED BY:

/s/ [Illegible]
Member of Council

ADOPTED: JULY 15, 1997

AMENDMENT NO. 6

TO

BILL NO. O97-796

Mr. President:

I move to amend Bill No O97-796 by

1 Deleting 6 54.110(C) which states

Subsection (A) shall have no application to any premises within the historically significant area as defined in Section 6.54.130(D)

2 Deleting 6.54 130(D) which states

Subsection (C) above shall have no application to any premises wherein the building is less than twenty (20) feet in width and the ceilings support joists of the premises are no more that 7½ (seven and one-half) feet from the floor, and which premises are located in a historically significant area and the business on said premises has been in operation for at least five (5) years

> Historically significant Area for this purpose shall be defined as follows: That area of downtown Metropolitan Nashville bound by Second Avenue North, Church Street, Fourth Avenue North, and Union Streets

3 Amending Section 6 54 130(C) by deleting the word "six (6)" after "and removed at least" but before "feet from the nearest customer" and placing in lieu thereof the word "three (3)"

4 Amending Section 6 54 130(A) by adding the words "on the premises" after the words "of the genitalia"

5 Amending Sections 6 54.040(E)(2), 6 54 070(D)(7), 6 54 100(M), and 6 54 160 by adding the sentence "If the applicant or the permitee/licensee chooses to appeal by filing a writ of certiorari then The Metropolitan Government shall file the record of all proceedings to date (the date of the filing) with the court within ten (10) days from the date the Metropolitan Government was served" at the end of the paragraph

6. Amending Section 6 54.030(F) by deleting the words "at the time of the passage of this ordinance" after the words "All existing adult entertainment establishments" and before the words "must submit an application" By further amending Section 6 54 030(F) by adding subsection 1 and 2 as follows

> 1 All businesses which apply for a license within the one-hundred-twenty day period may continue to operate the adult business described in the application until the board has heard the application and voted to grant or deny the application as described in 6 54 040
>
> 2. Any appeal regarding the denial of the application shall be in accordance with 6.54.040(E)(2)

7. Amending Section 6.54.060 by lettering the existing paragraph as Section "A" and adding a Section "B" and a Section "C" as follows

> B All entertainers wishing to perform adult entertainment at an adult entertainment establishment shall have forty-five days from the date this ordnance becomes effective to obtain and submit an application for a permit All entertainers which apply for a permit within the forty-five day period may continue to operate at an adult entertainment establishment until the board has heard the application and voted to grant or deny the application
>
> C. If the application any appeal regarding the denial of the application shall be in accordance with 6.54 070(D)(6) and (7)"

8 Amending section 6.54.110 by deleting the time "2 00 am" and substituting in lieu thereof the time "3 00 am" after the words "between the hours of" and before "and 6 00 am" and by deleting the time "6 00 am" and substituting in lieu thereof the time "8 00 am" after the word "and" and before the words "Monday through Saturday"

INTRODUCED BY

/s/ [Illegible]
Member of Council

/s/ [Illegible]

ADOPTED: AUGUST 7, 1997

AMENDMENT NO. 7

TO

BILL NO. O97-796

Mr. President:

I move to amend Bill No. O97-796 by

1. Deleting the words "adult entertainment" and substituting in lieu thereof the words "sexually oriented" wherever the words appear in the ordinance except as specified below.

2. Deleting the words "adult entertainment establishment" and substituting in lieu thereof the words "sexually oriented business" throughout the entire ordinance.

3. Deleting the words "adult entertainment establishments" and substituting in lieu thereof the words "sexually oriented businesses" throughout the entire ordinance.

4. Deleting the word "adult" and substituting in lieu thereof the words "sexually oriented" wherever the word adult appears in the ordinance except; in Section 1(A) PURPOSE, the word "adults" after the words "or deny access by" and before the words "to sexually oriented materials protect" shall remain.

5. Deleting the word "an" and substituting in lieu thereof the word "a" before the words "sexually oriented business" wherever the word "an" precedes the words "sexually oriented business".

6. Amending the seventh whereas clause by deleting the word "entertainment" after the words "sexually oriented" and substituting in lieu thereof the word "business" and by changing the word "ordinance" to "ordinances" after the

words "sexually oriented business" and before "are unaffected by the following".

INTRODUCED BY:

/s/ [Illegible]
Member of Council

ADOPTED: AUGUST 7, 1997

Chapter 6.54

SEXUALLY ORIENTED BUSINESSES

Sections:

6.54.010 Definitions.

6.54.020 Sexually oriented business licensing board.

6.54.030 License required.

6.54.040 Application for license.

6.54.050 Standards for issuance of license.

6.54.060 Permit required.

6.54.070 Application for permit.

6.54.080 Standards for issuance of a permit.

6.54.090 Fees.

6.54.100 Display of license or permit.

6.54.110 Renewal of license or permit,

6.54.120 Hours of operation.

6.54.130 Responsibilities of the operator.

6.54.140 Prohibitions and unlawful sexual acts.

6.54.150 Revocation or suspension of license/ permit.

6.54.160 Penalties and prosecutions.

6.54.170 Invalidity of part.

6.54.010 Definitions.

For the purpose of this chapter, the words and phrases used in this chapter shall have the following meanings, unless otherwise clearly indicated by the context:

A. "Aggravated rape" means as defined in the Tennessee Code Annotated Section 39-15-502.

B. "Aggravated sexual battery" means as defined in the Tennessee Code Annotated Section 39-15-504.

C. "Booth" means any booth, cubicle, stall, room or compartment which is designed, constructed or used to hold or seat patrons/customers and is designed such that the booth is separated from the common areas of the premises and is used for presenting sexually oriented entertainment including, but not limited to viewing sexually oriented moving pictures or viewing sexually oriented publications by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for observation by patrons therein. "Booth" shall not mean a room or enclosure that is designed, constructed and regularly used to seat more than ten persons.

D. "Crimes of a sexual nature" means the crimes of rape, aggravated rape, aggravated sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, or crimes committed in a jurisdiction other than Tennessee which, if committed in this state, would have constituted the crimes listed above. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used to determine what classification the offense is given.

E. "Current entertainer" means an entertainer performing sexually oriented entertainment within the metropolitan area as of March 1, 1999.

F. "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of a sexually oriented business.

G. "Entertainer" means any person who provides live entertainment within a sexually oriented business as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

H. "Existing sexually oriented business," means a sexually oriented business that is operating within the metropolitan area as of March 1, 1999.

I. "Indecent exposure" means as defined in the Tennessee Code Annotated Section 39-13-511.

J. "Location" means a single site for which only one use and occupancy permit would be required.

K. "Metropolitan area" means the general services district of the metropolitan government of Nashville and Davidson County.

L. "Metropolitan council" means the legislative body of the metropolitan government of Nashville and Davidson County, Tennessee.

M. "New entertainer" means an entertainer not performing sexually oriented entertainment within the metropolitan area as of March 1, 1999.

N. "New sexually oriented business" means a sexually oriented business not in operation as of March 1, 1999.

O. Deleted.

P. "Operator" means any person, partnership, limited partnership, joint venture, corporation or any other type of business entity operating, conducting or maintaining a sexually oriented business.

Q. "Patronizing prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

R. "Promoting prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

S. "Prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

T "Public indecency" means as defined in the Tennessee Code Annotated Section 39-13-511.

U. "Rape" means as defined in the Tennessee Code Annotated Section 39-15-503.

V. "Rape of a child" means as defined in the Tennessee Code Annotated Section 39-15-522.

W. "Sexual battery" means as defined in the Tennessee Code Annotated Section 39-15-505.

X. "Sexual exploitation of a minor" means as defined in the Tennessee Code Annotated Sections 39-17-1003, 39-17-1004 and 39-17-1005.

Y. "Sexually oriented" when used to modify film, movie, motion picture, videocassette, slides, or other photographic reproductions means a film, movie, motion picture videocassette, slides or other photographic reproduction that regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing

"specified sexual activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business.

Z. "Sexually oriented business/establishment" means any commercial establishment which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

1. "Sexually oriented bookstore" means an establishment having a majority of its stock in trade or a majority of its floor space in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, sexually oriented videos, sexually oriented films, or sexually oriented live entertainment, for observation by patrons therein.

2. "Sexually oriented nightclub" means a theater, concert hall, auditorium, nightclub, bar, restaurant, or similar commercial establishment which regularly features live performances that are characterized by any actual or simulated performance of "specified sexual activities" or the exposure of "specified anatomical areas," as defined in this section.

3. "Sexually oriented theater" means an enclosed building in which films, motion pictures, videocassettes,

slides, or other photographic reproductions that are distinguished or characterized by an emphasis on depictions of "specified sexual activities" or "specified anatomical areas," as defined in this section, are regularly presented for observation by patrons therein.

4. "Sexually oriented video store" means a commercial establishment having a majority of its stock or a majority of its floor space dedicated to "sexually oriented videos," as defined in this section, which are rented or sold or presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "sexually oriented videos," or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

a. "Sexually oriented videos" means a video, CD, laser disk, or similar medium with a cover that depicts "specified sexual activities" or "specified anatomical areas" or a transparent or less than opaque cover through which "specified sexual activities" or "specified anatomical areas" can be viewed.

AA. "Sexually oriented entertainment" means the regular presentation, for a fee or incidentally to another service, of material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

BB. "Sexually oriented material" means "sexually oriented entertainment" and/or any material, including films, movies, motion pictures, videocassettes, slides, or other photographic reproductions, which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business.

CC. "Specified anatomical areas" means:

1. Less than completely and opaquely covered;

a. Human genitals, pubic region,

b. Buttocks,

c. Female breasts below a point immediately above the top of the areola; and

2. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

DD. "Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

EE. "Statutory rape" means as defined in the Tennessee Code Annotated Section 39-15-506. (Ord. BL99-61 §§ 1-5, 2000; Ord. 99-1814 §§ 1-5, 1999; Amdt. 1 § 1 with Ord. 99-1503 §§ 1-3, 1999; Ord. 97-1022 § 1, 1997;

amended during 9-97 supplement; Amdt. 7 (part) and Amdt. 3 §§ 1 and 2 with Ord. 97-796 § 2 (part), 1997)

6.54.020 Sexually oriented business licensing board.

A. Establishment. A sexually oriented business licensing board is created and designated the metropolitan sexually oriented business licensing board (herein "board").

B. Membership – Terms.

1. The board shall consist of five members, who shall have been residents of the metropolitan area for not less than one year, and who shall continue to be eligible so long as they reside in the metropolitan area, to be appointed by the mayor and confirmed by a majority vote of the metropolitan council.

2. At least one of the five members shall be an attorney, and one of the five members shall be a health provider.

3. Of the five members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of three years, and one shall be appointed for a term of four years. Thereafter, each member shall be appointed for a term of four years, and shall serve until his/her successor is appointed. Any vacancy other than the expiration of terms shall be filled for the unexpired term.

C. Election of Officers – Term. The board shall organize by the election of a chair and a vice-chair, who shall serve for a period of one year or until a successor shall have been chosen. The vice-chair is authorized to act

in the place of the chair and in the same capacity as the chair when the chair is unavailable.

D. Meetings – Quorum Required – Minutes and Transcript.

1. The board shall hold two regular meetings each month at a time fixed by the board, and may hold such special meetings as may be necessary.

2. The attendance of at least a majority of the members of the board, not including unfilled positions, shall be required to constitute a quorum for the purpose of transacting business.

3. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a license and/or a permit. The concurring vote of a majority of the members present and voting shall be necessary for the granting, revoking, suspending or any other action involving licenses or permits.

4. No transcript of the proceedings had before the board shall be in any form other than narrative, unless the board shall have been requested to provide for an exact copy of the testimony by an interested party at least twenty-four hours prior to a board meeting. The cost of an exact copy shall be borne by the person requesting the same.

E. Powers and Duties.

1. The board shall have jurisdiction over the licensing, regulating and controlling of all sexually oriented establishments as provided in this chapter, located in the metropolitan area.

2. The board may promulgate such bylaws, rules and regulations not inconsistent with state law, the Metropolitan Charter, or any ordinance, as it deems appropriate for the conducting of its business.

3. The board has the authority to subpoena witnesses to testify before the board.

F. Inspectors – Authority. The board is empowered to employ suitable person(s) as inspectors which inspectors shall not hold any civil service status. The board shall prescribe the duties of such inspectors so as to enforce the applicable provisions of this title.

G. Procedures for Hearings. This section shall apply to all hearings by the board including but not limited to hearings for revocation, suspension or denial of a license/permit.

1. Upon receiving a written request for a hearing, the board shall send the party requesting the hearing a notice stating the time and place of the hearing and the right to be represented by counsel.

2. At the hearing, the party requesting the hearing shall appear on his/her own behalf or be represented by counsel. All witnesses shall be sworn. The chair shall allow the party requesting the hearing to present witnesses on his/her own behalf and to cross-examine all witnesses testifying against him/her.

3. All decisions of the board shall be in writing, setting forth the findings of the board, and shall be signed by the chair or vice-chair.

4. Minutes shall be kept of all proceedings before the board in permanent form and a record shall be kept of the actions of the board with respect to all hearings.

5. A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. The record must be maintained by the board for a period of ninety days. Such record or any part thereof shall be transcribed at the request of any party at such party's expense.

6. The board will arrange for a court reporter to be present at any hearing after an initial adverse administrative decision. (Amdt. 1 with Ord. 99-1814 § 6, 1999; Amdt. 1 § 14 with Ord. 99-1503, 1999; Ord. 97-1022 § 3, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.030 License required.

A. Except as provided in subsection F of this section, from and after March 1, 1999, no sexually oriented business shall be operated or maintained within the metropolitan area without first obtaining a license to operate issued by the board.

B. Any person, partnership, limited partnership, joint venture, corporation or any other type of business entity which desires to operate more than one sexually oriented business/establishment must have a license for each sexually oriented business/establishment.

C. Only one license may be issued for each sexually oriented business location.

D. No license or interest in a license may be transferred to any person, partnership or corporation.

E. It is unlawful for any entertainer or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed sexually oriented business. It is unlawful for any employee to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed sexually oriented business while sexually oriented entertainment is being presented.

F. All existing sexually oriented businesses, as defined in Section 6.54.010, must submit an application for a license by March 15, 1999, or cease operations. All existing sexually oriented businesses which apply for a license by March 15, 1999, may continue to operate the sexually oriented business described in the application even if the board votes to deny the application where such denial is appealed to a court in accordance with Section 6.54.040(E)(3). All new sexually oriented businesses, as defined in Section 6.54.010, may submit an application at any time but may not operate until a license is granted except as permitted in Section 6.54.040(E)(4).

G. Any applicant found to have previously violated this chapter by operating or maintaining a sexually oriented business/establishment within the metropolitan area without a license, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a license for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 7, 8, 1999; Ord. 99-1503 §§ 4, 5, 1999; Ord. 97-1022 § 5, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.040 Application for license.

A. Application.

1. Any person, partnership, limited partnership, joint venture, corporation or any other type of business entity desiring to secure a license shall make application to the board. The applicant shall file the original application with six copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be distributed the next business day by the board to: the police department, the department of codes administration, the health department, and the applicant.

2. Application forms shall be available at the office of the board.

3. The application form shall include all the information indicated in subdivisions (5)(a) through (5)(I) of this subsection.

4. The following persons must be listed in the license application for any sexually oriented business that is a corporate entity of any kind: the registered agent and the name and address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day-to-day operation and management of the business. The following persons must be listed in the license application for any sexually oriented business that is a partnership, limited partnership, joint venture, or any other type of business: the name and address of all persons who will be involved in the day-to-day operation and management of the business.

5. The applicant shall furnish the following information under oath:

a. Name and address of the applicant, including all aliases (business address is sufficient);

b. Proof of the applicant's date of birth demonstrating that the applicant is at least eighteen years of age;

c. All residential addresses of the applicant for the past three years (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

d. Whether the applicant previously operated in this or any other county, city or state under a sexually oriented business/adult entertainment license/permit. Whether the applicant has ever had such a license/permit revoked or suspended, within the last year from the date of application, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;

e. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a misdemeanor violation that have occurred within the past two years. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a felony that have occurred within the past five years;

f. All judgements by a court within one year for violations of the metropolitan zoning Section 17.64.260;

g. Fingerprints and two photographs at least two inches by two inches of the applicant (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

h. The address of the sexually oriented business to be operated by the applicant;

i. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day-to-day operation of the business;

j. If the applicant is a partnership, joint venture, or any other type of business, the application shall specify the name and address of all persons who will be involved in the day-to-day operation of the business;

k. A statement by the applicant that he/she is familiar with the provisions of this chapter and a statement swearing that information provided on the application is true and accurate.

6. The applicant shall provide the board with his/her application, a diagram, drawn to scale of the premises, including the location and layout of all booths and stages and the location of the clerk/manager's stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared.

7. If any of the information on the application changes over the course of the time for which the license is issued, including any changes in the physical layout of the premises, the licensee shall inform the board, in writing, of the changes.

B. Inspections and Investigations.

1. The codes department shall, upon receipt of a copy of the application, inspect the premises to insure that the establishment complies with the unique physical layout requirements set out in Section 6.54.050(A)(1), 6.54.050 (A)(3) and 6.54.130(C) of this chapter. The health department shall inspect the premises to insure compliance with applicable health code statutes, ordinances, and regulations. The police department shall investigate the applicant's criminal history collecting the applicant's fingerprints and 2 x 2 photo either by performing these functions or by reviewing these items which were provided by the applicant and by performing a background investigation for crimes of a sexual nature. The results of both the inspections and the investigation shall be filed in writing with the board no later than twenty days after the date the application was filed with the board. Any inspection or investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving the license and shall be treated by the board as if the report revealed no violations of applicable statutes, ordinances, or regulations, no violations of the provisions of this chapter, no sexually-oriented business/ adult entertainment zoning code violations and/or no applicable criminal history.

2. The code department shall confirm that any booths or stages conform with the submitted diagram and the requirements set out in Sections 6.54.050A and 6.54.130.

3. The police department shall complete its investigation and the codes department and health department shall complete their respective inspections and shall

communicate the results to the board in writing within twenty days of receipt of the application. The written investigation from the codes department and health department shall end with substantially one of the following statements:

> The location at ___ complies with Chapter 6.54 and the applicable health code sections of the metropolitan code.
>
> The location at ___ does not comply with Chapter 6.54 and the applicable health code sections of the metropolitan code. It is in violation of the following provisions: Section numbers of code violations.

The writing from the police department shall end with substantially the following statement:

> The police department's criminal record check indicates that the persons listed on the application have/have not committed a crime of a sexual nature within the past five years. The persons listed on the application have committed the following crimes of a sexual nature:
>
> Name Crime Date

4. If the building/structure has a valid use and occupancy permit, the applicant shall provide the board with a copy of the valid use and occupancy permit which shall be made part of the file.

C. Board Action on Inspection and Investigation Results.

1. Within fifteen days of receiving the results of the investigation conducted by the police department

and the inspections by the codes department, and health department the board will meet and determine if the applicant is in compliance with this chapter and the applicable health statutes, ordinances and regulations.

2. If the board determines that the applicant is in compliance with this chapter, the applicable health statutes, ordinances and regulations, and the applicant has not committed a crime of a sexual nature, as defined in Section 6.54.010, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application, then the board shall grant the license. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

3. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the license shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of the events described in this paragraph.

4. In the event the board denied the application in accordance with the provisions of this chapter, such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation and inspections.

5. If it is determined by the board, using the application and the inspection reports that the applicant has violated the provisions of the zoning code applicable to sexually oriented/adult entertainment businesses within the past two years, then the applicant is ineligible for a

license for one year from the date the citation was sustained. A violation of the zoning code shall be evidenced by a judgement of a court. The fact that the judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgment is stayed.

6. Any investigation reports or inspection reports not filed with the board in the time period specified in this section shall not prevent the applicant from receiving his/her license and shall be treated by the board as if that department approved the application.

7. If the board determines that the actual structure does not comply with Section 6.54.050(A) or the submitted diagram, then the applicant is not in compliance with this code section and the license shall be denied in accordance with Section 6.54.050(A) and (B).

8. If in the course of the investigation it is discovered any false or misleading statement or information was given on the application, or material facts were omitted from the application, the board shall deny the application in accordance with Section 6.54.050(B)(3). False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

9. Within fifteen days of receiving the results of the investigation conducted by the police department, and inspection reports from the codes department, and health department, if the board shall determine that the applicant is not in compliance with this chapter, the zoning code or the applicable health statutes, ordinances and regulations, the applicant shall be notified in writing, the next business day, that the license is denied for failing to

comply with applicable statutes, ordinances and regulations. This notice shall specify the violation. If the applicant can come into compliance as described in subsection D of this section, the denial shall not take effect. The notice shall also specify that the applicant may request a hearing within five days, cure the violation within fifteen days and request reinspection or request an extension of time.

10. The board has the discretion to hold any application for further investigation if: (a) the initial investigation requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days, from the end of the initial fifteen days specified subsection (C)(1) of this section, unless otherwise agreed to by the applicant.

11. Wherever an application is denied or held for further investigation, the board shall advise the applicant in writing the next business day of the reasons for such action. Upon conclusion of the additional investigation, the board shall advise the applicant in writing the next business day whether the application is granted or denied.

12. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his/her refusal or failure to appear at a reasonable time and place for examination under oath regarding such application or his/her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial

thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection (C)(10) of this section.

D. Extensions of Time for the Applicant.

1. If the license is denied, the applicant may reinstate his/her application by notifying the board in writing that he/she has come into compliance and requests reinspection.

a. The applicant has fifteen days from the mailing of the denial to cure the violation and notify the board or to request an extension pursuant to subsection (D)(2) of this section. The applicant has the responsibility to contact the board.

b. Once contacted, the board shall notify the appropriate inspector the next business day that the applicant believes he/she has come into compliance.

c. Upon notification by the board, the appropriate inspector shall return to the location for reinspection and shall submit another written report as indicated in subsection (B)(3) of this section. The inspector has five days from the date he/she was notified by the board to reinspect the premises and inform the board as to whether the applicant has come into compliance in the same manner described in subsection (B)(3) of this section and using the same language required in subsection (B)(3) of this section.

d. Based on the report of the inspector(s), the board shall determine if the applicant has come into compliance, and if so the board shall issue the license at the next regular meeting. The next meeting shall be held no later than fifteen days after the inspection report is filed with

the board. Any inspections not filed with the board in the time period specified in this section will be treated as described in subsection (C)(6) of this section.

e. If the applicant fails to either contact the appropriate inspector to report that the code violations have been corrected, or if the code violations have not been corrected, then the application will be denied.

2. If the process of curing the violation requires more time than that provided in subsection (D)(1) of this section. the applicant may request an extension from the board. If the applicant does not make such a request in the time allotted, the application is denied.

a. The request for an extension must be made in writing within fifteen days from the denial.

b. The board shall hear the applicant's request for an extension at the next regular meeting. The next meeting shall be held no later than fifteen days after the request for the extension is received by the board.

c. The hearing on the extension shall follow the same rules as set out in Section 6.54.020(G) except that the decision of the board shall grant or deny the extension and a decision to grant an extension shall take effect immediately.

d. An extension shall only be granted when the codes inspector and the health inspector agree that an extension will not endanger the health or safety of the community and the board determines that the applicant has demonstrated a good faith effort to make the necessary repairs or cure the violation(s) in a timely manner.

3. If the applicant fails to follow the procedure set out in this subsection then the application is denied and the applicant must reapply to obtain a license. Following the procedure set out in subsections (D)(1) or (D)(2) of this section requires no additional fees. Once the deadlines to cure the violation or ask for an extension of time have passed, the initial denial shall be treated as a denial of the application.

E. Denial of the License Application.

1. When an application is denied, the applicant has the right to request a hearing within five days of the board's notification.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing state the reasons for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

f. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the license shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of that specified time period.

2. Any denial of an application for a license may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of law may institute proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

3. For an existing sexually oriented business, as defined in Section 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with Section 6.54.150(A)(8). Adverse administrative decisions of the board, which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

4. For a new sexually oriented business, as defined in Section 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board. If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with Section 6.54.150(A)(8). (Ord. 99-1814 §§ 9 – 32, 1999; Amdt. 1 §§ 2, 3 with Ord. 99-1503 §§ 6 – 30, 1999; Ord. 97-1022 §§ 6 – 39, 1997; amended during 9-97 supplement; Amdt. 6 § 5 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.050 Standards for issuance of license.

A. Physical Layout of Sexually Oriented Business.

1. Any sexually oriented business having available for customers, patrons or members any booth, for the viewing of any sexually oriented entertainment, including but not limited to sexually oriented films, sexually oriented movies, sexually oriented videos, shall submit a diagram under Section 6.54.040(A)(6) and the diagram submitted must be substantially the same as the structure observed by the inspector. Further, the structure and the diagram shall comply with the following requirements:

a. Access. Each booth shall be totally accessible to and from aisles and public areas of the sexually oriented business and shall be unobstructed by any door, gate, lock or other control-type devices.

b. Construction. Every booth shall meet the following construction requirements:

i. Each booth shall be separated from adjacent booths and any nonpublic areas by a solid or opaque wall;

ii. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same;

iii. All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleanable;

iv. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable; and

v. The lighting level of each booth shall be a minimum of ten footcandles at all times as measured from the floor.

2. The provisions enunciated in subdivision 1 of this subsection shall not apply to bathrooms unless the bathroom contains any equipment which would allow the viewing of sexually oriented films, sexually oriented movies, sexually oriented videos.

3. Any live performance of sexually oriented entertainment shall occur upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest customer. A three-foot boundary from the outer edge of the stage shall be indicated on the floor by a rail, barrier, lighting, luminous tape or paint, or any other method which will make the boundary visible in a darkened condition so that the customer will not invade the three-foot boundary from the stage with any portion of his/her body.

B. Applicant.

1. To receive a license to operate a sexually oriented business, an applicant must meet the following standards:

a. If the applicant is an individual, the applicant shall be at least eighteen years of age;

b. If the applicant is a corporation, all officers, directors and stockholders required to be named under Section 6.54.040(A)(5)(i) shall be at least eighteen years of age;

c. If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest, all persons having a financial interest in the business and who are involved in the day-to-day operation of the business shall be at least eighteen years of age.

2. No individual applicant, no officer, director or stockholder required to be named under Section 6.54.040(A)(5)(i) and no partners required to be named under Section 6.54.040(A)(5)(j) convicted of a crime of a sexual nature, as defined in Section 6.54.010, in any jurisdiction shall be eligible to receive a license for the time period described below.

a. If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

b. If the conviction was for a felony violation, then the applicant shall be ineligible to receive a permit for five years from the date of the conviction.

c. The time is computed from the date of the conviction by the trial court to the date of the application,. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant until the trial court's conviction is reversed.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

a. If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a license for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in Section 6.54.010.

b. If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is later.

c. If the misleading statements or omissions referred to a crime of a sexual nature, as defined in Section 6.54.010, then the applicant shall not be eligible to receive a license until the time period described in subsection (B)(2)(a) through (c) of this section has expired or until one year has passed from the date of the application which

contained the misleading statements or omissions, whichever is later.

d. If the misleading statements or omissions referred to violations of Section 17.36.260 of the zoning code, then the applicant shall not be eligible to receive a permit until the time period described in subsection (B)(5) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

4. An applicant having had a sexually oriented business/establishment license or similar license/permit revoked within the last year shall not be eligible for a license for one year from the date of revocation.

5. No applicant shall have been found to have previously violated Section 17.36.260 of the metropolitan zoning code applicable to sexually oriented/adult entertainment businesses, as evidenced by the judgement of a court within one year immediately preceding the date of the application. If such violations exist, the applicant shall be ineligible for a license for one year from the date the citation was sustained. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant until the trial court's judgement is reversed.

6. Any applicant found to have previously violated this chapter by operating or maintaining a sexually oriented business/establishment within the metropolitan area without a license, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a license for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on

the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 33 – 35 1999; Ord. 99-1503 §§ 31 – 49, 1999; Ord. 97-1022 §§ 40 – 45, 1997; amended during 9-97 supplement; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.060 Permit required.

A. Except as provided in subsection B of this section, from and after March 1, 1999, no person shall be an entertainer in a sexually oriented business within the metropolitan area without first obtaining a permit issued by the board.

B. All current entertainers, as defined in Section 6.54.010, wishing to continue to perform sexually oriented entertainment must submit an application for a permit by March 15, 1999. All current entertainers, who apply for a permit by March 15, 1999, may continue to perform sexually oriented entertainment even if the board votes to deny the application where such denial is appealed to a court in accordance with Section 6.54.070(D)(3). All new entertainers, as defined in Section 6.54.010, may submit an application at any time but may not perform sexually oriented entertainment until a permit is granted except as described in Section 6.54.070(D)(4).

C. Any entertainer found to have previously violated this chapter by providing sexually oriented entertainment in a sexually oriented business, establishment within the metropolitan area without a permit, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a permit for one year from the date of the judgement. The

fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 36, 37, 1999; Ord. 99-1503 § 50, 1999; Ord. 97-1022 §§ 46, 47, 1997; Amdt. 7 (part) and Amdt. 6 § 7 with Ord. 97-796 § 2 (part), 1997)

6.54.070 Application for permit.

A. Application.

1. Any person desiring to secure a permit shall make application to the board. The applicant shall file the original application with three copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be distributed the next business day by the board to the Metropolitan Nashville police department and the applicant.

2. Application forms shall be available at the office of the board. Applicants may obtain their application from the codes department. Applicants must also submit with each application two 2 x 2 photos.

a. Background Check. All background checks shall be completed by the metropolitan police department. The police department may be notified of a need for a background check in two ways. The applicant brings his/her application, including one of the two photos to the police department and has his/her fingerprints taken at the police department. The police then begin the background check and once completed, send the background check, application, fingerprint card, and photo to the office of the board. In the alternative, the applicant can obtain fingerprints as described below, turn into the board a complete application including, fingerprints and two photos and the

board shall send the complete application to the police department requesting a background check. The police will return the complete application with the completed background check to the office of the board.

b. Fingerprints. The applicant shall have his/her fingerprints completed by the police department. If the applicant intends to mail his/her application to the board then he/she shall have his/her local law enforcement agency take his/her fingerprints and photograph and that law enforcement agency shall mail the fingerprints directly to the metropolitan police department.

c. Fees. If the applicant brings his/her application to the police department, the police department shall not charge the applicant any additional fee for fingerprinting or a background check. If the applicant has the fingerprinting performed without informing the police department that it is for his/her application for a sexually oriented entertainer permit, then the applicant may retain the receipts for the fingerprinting and give them to the codes department when the applicant files his/her application. The codes department shall subtract the expenses for the fingerprints from the one hundred dollar permit fee, and the applicant shall pay the difference. This same procedure applies if the applicant has his/her fingerprints and photographs taken by their local law enforcement agency and mailed directly to the metropolitan police department. Photos can be taken by the codes department at no additional fee or the applicant may have his/her photo taken elsewhere.

3. The application form shall include all information indicated in subdivisions (4)(a) through (4)(h) of this subsection.

4. The applicant shall furnish the following information under oath:

a. Name and address including all aliases;

b. Proof of the applicant's date of birth demonstrating that the applicant is at least eighteen years of age;

c. All residential addresses of the applicant for the past three years (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

d. The applicant's height, weight, color of eyes, and hair (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

e. Whether the applicant previously entertained in this or any other county, city, or state under a sexually oriented business license/permit or similar business license/permit within the last year. For whom the applicant was employed or associated at the time. Whether the applicant has had such a license/permit revoked or suspended within the last year and the reason therefor and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

f. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a misdemeanor violation that have occurred within the past two years. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a felony that have occurred within the past five years;

g. Fingerprints and two photographs at least two inches by two inches of the applicant (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature); and

h. A statement by the applicant that he/she is familiar with the provisions of this chapter and a statement swearing that information provided on the application is true and accurate.

B. Investigation. The police department shall investigate the applicant's criminal history by collecting the applicant's fingerprints and 2 x 2 photo and by performing a background investigation for crimes of a sexual nature. The results of the investigation shall be filed in writing with the board no later than twenty days after the date the application was filed with the board. Any investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if the report revealed no applicable criminal history.

C. Board Action on the Investigation Results.

1. Within fifteen days of receiving the results of the investigation conducted by the police department the board will meet and if it determines that the applicant has not been convicted of a crime of a sexual nature, as defined in Section 6.54.010, has not had a similar type of permit/license revoked in the last year, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the permit.

False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

2. If the board fails to meet within the time period specified, or fails to have a quorum at the meeting then the permit shall be deemed approved and sent to the applicant by United States mail to the address listed on the application.

3. In the event the board denied the application in accordance with Section 6.54.080, such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation.

4. Any investigation reports not filed with the board in the time period specified in this section shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if that department approved the application.

5. If in the course of the investigation it is discovered any false or misleading statements or information was given on the application, or material facts were omitted from the application, the board shall deny the application in accordance with Section 6.54.080. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

6. The board has the discretion to hold any application for further investigation if: (a) the initial investigation

requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or the revocation of a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days from the end of the initial fifteen days specified in subsection (D)(1) of this section, unless otherwise agreed to by the applicant.

7. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing the next business day of the reasons for such action. Upon conclusion of the additional investigation, the board shall advise the applicant in writing the next business day whether the application is granted or denied.

8. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at a reasonable time and place for examination under oath regarding such application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he/she is ineligible for such permit and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection (C)(6) of this section.

D. Denial of the Permit Application.

1. When an application is denied, the applicant has the right to request a hearing within five days of the board's decision.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing state the reasons for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

f. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the permit shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of that specified time period.

2. Any denial of the application for a permit may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of law may also initiate proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall

file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

3. For any current entertainer, as defined in Section 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with Section 6.54.150(C)(8). Adverse decisions of the board, which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

4. For a new entertainer, as defined in Section 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board. If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with Section 6.54.150(C)(8).

E. The permit carried by the entertainer shall contain only the following information:

1. A photo identification as provided by the applicant;

2. A computer-generated number assigned to each applicant, corresponding to the file maintained on each applicant by the sexually oriented business licensing board; and

3. The date the permit was issued. (Ord. 99-1814 §§ 38 – 46, 1999; Amdt. 1 §§ 4 – 7 with Ord. 99-1503 §§ 51 – 64, 1999; Ord. 97-1022 §§ 48 – 62, 1997; amended during 9-97 supplement; Amdt. 7 (part), Amdt. 6 § 5 (part) and Amdt. 1 with Ord. 97-796 § 2 (part), 1997)

6.54.080 Standards for issuance of a permit.

A. Applicant. To receive a permit as an entertainer, an applicant must meet the following standards:

1. The applicant shall be at least eighteen years of age.

2. No applicant convicted of a crime of a sexual nature, as defined in Section 6.54.010, in any jurisdiction shall be eligible to receive a permit for the time period described below.

a. If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

b. If the conviction was for a felony violation, then the applicant shall be ineligible to receive a permit for five years from the date of the conviction.

c. The time is computed from the date of the application to the date of the conviction.

3. The applicant shall not have given any false or misleading information on the application, or omitted any

material facts from the application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

a. If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in Section 6.54.010. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

b. If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

c. If the misleading statements or omissions referred to a crime of a sexual nature, as defined in Section 6.54.010, then the applicant shall not be eligible to receive a permit until the time period described in subsection (A)(2)(a) through (c) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

4. The applicant shall not have had a sexually oriented business permit/license or similar business

permit revoked within the last year immediately preceding the application.

5. Any applicant found to have previously violated this chapter of the metropolitan code by providing sexually oriented entertainment within the metropolitan area without a permit, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a permit for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 47, 1999; Amdt. 1 § 8 with Ord. 99-1503 §§ 65 – 70, 1999; Ord. 97-1022 § 63 (part), 1997)

6.54.090 Fees.

A. A license fee of three hundred fifty dollars shall be submitted with the application for a license. If the application is denied, one-half of the fee shall be returned.

B. A permit fee of fifty dollars shall be submitted with the application for a permit. If the application is denied, one-half of the fee shall be returned. (Ord. BL99-61 § 6, 2000; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.100 Display of license or permit.

A. The license shall be displayed in a conspicuous public place in the sexually oriented business.

B. The permit shall be carried by or be accessible to the entertainer during that entertainer's working hours

and shall be displayed upon request of any member of the police department, health inspector, or board inspector.

C. If the business for which a license was issued ceases to exist in that a majority of the business assets have been liquidated, or the business has closed and ceased operations, then the license shall be returned to the board and cease to be valid. (Ord. 99-1503 §§ 67(2), 71, 1999; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.110 Renewal of license or permit.

A. Every license/permit issued pursuant to this chapter will terminate at the expiration of one year from the date of issuance unless sooner revoked and must be renewed before operation the following year.

B. Any operator desiring to renew a license or any entertainer desiring to renew a permit shall make application to the board. The application for renewal must be filed not later than sixty days before the license/permit expires. The original application for renewal plus the number of copies listed in Section 6.54.040A or 6.54.070A shall be filed and dated by the board.

C. The board shall send a copy to the same departments who would receive a copy of the initial application. These departments shall process the application in the same manner and within the same time limits which apply to the initial application.

D. The board shall provide the applicant with a copy of the application from the previous year and a new application form.

E. The renewal form shall be the same form described in Section 6.54.040A for a license and Section 6.54.070A for a permit except as indicated below in subsection H of this section.

F. For a renewal, the applicant may fill out the new form in its entirety or fill in any information which has changed over the year and is now different than the information indicated on the application from the prior year. The renewal must also include an updated background check by the police department and an updated 2 x 2 photo. The renewal does not require resubmission of fingerprints submitted with the initial application. However, if new or additional persons are involved in the day to day operation of the licensed business those persons must submit fingerprints as described above.

G. If the applicant chooses to only include information concerning items which have changed, he/she will swear to the accuracy of both the information contained in the renewal form and the information attached from the prior year.

H. The renewal application form shall be the same form described in Section 6.54.040A for a license or Section 6.54.070A for a permit except the final line shall state:

> I swear the information I have given in the application from 199___ is still accurate and any facts or circumstances which have changed are indicated in this application for a renewal of the license/permit.
>
> _____
>
> signature of applicant

I. A license renewal fee of five hundred dollars shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars shall be assessed against the applicant who files for a renewal less than sixty days before the license expires. If the renewal is denied, one-half of the fee collected shall be returned.

J. A permit renewal fee of one hundred dollars shall be submitted with the application for renewal. In addition to such renewal fee, a late penalty of fifty dollars shall be assessed against the applicant who files for renewal less than sixty days before the permit expires. If the renewal is denied, one-half of the fee shall be returned.

K. The application for a renewal is subject to the same rules and limitations as the initial application.

L. When an application for a renewal is denied, the applicant has the right to request a hearing within five days of the board's decision.

1. The request shall be in writing and filed with the board within five days of the board's decision.

2. The board shall hear all the evidence pertaining to the denial of the renewal application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

3. At the hearing, the applicant may present evidence as to why his/her renewal application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any

denial to the circuit or chancery courts of Davidson County.

4. The board shall affirm or reject the denial of the renewal application at the hearing and in writing state the reasons for the board's decision.

5. The denial of the renewal application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

6. Any adverse administrative decision regarding the renewal of a license/permit that is appealed to any court shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. If a court fails to rule within forty days of the filing of an appeal, a new license/permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the renewal for a license/permit then that license/permit shall be revoked in accordance with Section 6.54.150(A)(8) and (C)(8). Adverse decisions of the board which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

M. The denial of any renewal for a license/permit may be appealed to the circuit or chancery courts of Davidson County by the applicant. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the applicant or the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan governments shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with the petition for a writ of certiorari. (Amdt. 1 § 9 with Ord. 99-1503

§§ 72, 73, 1999; Ord. 97-1022 §§ 63 (part), 64 – 68, 1997; amended during 9-97 supplement; Amdt. 7 (part) and Amdt. 6 § 5 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.120 Hours of operation.

A. All sexually oriented businesses shall be closed between the hours of three a.m. and eight a.m. Monday through Saturday and between the hours of three a.m. and twelve noon on Sundays.

B. All public areas of every sexually oriented business shall be open to inspection at any time during normal business hours by the following departments: police, codes, board inspector, and health. (Ord. 99-1503 § 74, 1999; Ord. 97-1022 § 63 (part), 1997; Amdt. 7 (part) and Amdt. 6 § 8 with Ord. 97-796 § 2 (part), 1997)

6.54.130 Responsibilities of the operator.

A. An operator is responsible for the conduct of all entertainers while on the licensed premises and any act or omission of any entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, renewed or a penalty assessed subject to the limits described in Section 6.54.150(E).

B. No employee on the premises for furthering the business, but not including independent contractors on the premises for repairs and construction, of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business or to allow any

minor to view sexually oriented entertainment as defined herein on the premises of a licensed business.

C. Every sexually oriented business shall be physically arranged in such a manner that the entire interior portion of any booths, wherein sexually oriented motion pictures, sexually oriented movies, sexually oriented films or sexually oriented videos are viewed, shall be visible from the common area of the premises having at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. Further, any wall forming any portion of the booths, shall be solid and without any openings, extended from the floor to a height of not less than six feet. This section shall be construed in conjunction with Section 6.54.050A.

D. It is unlawful to install enclosed booths for the purpose of viewing of sexually oriented motion pictures, sexually oriented movies, sexually oriented films, sexually oriented videos. The licensee shall be responsible for and shall provide that any booth, or area used for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films or sexually oriented videos shall be readily accessible at all times and shall be continuously open to view in its entirety.

E. Live sexually oriented entertainment shall not be permitted in booths.

F. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

> This Sexually Oriented Business is regulated by The Metropolitan Code of Nashville and Davidson County, Chapter 6.54 which provides that no customer shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performances shall only occur upon a stage at least eighteen inches above the immediate floor level at least three feet from the nearest customer.

G. It shall be the duty of the operator, to ensure that the line of sight and view area between the common area and any booths remain unobstructed by any doors, walls, merchandise, display racks or other materials at any time that any patron is permitted access to any booth. Entertainers and employees, on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, shall not place any obstructions in front of any booths at any time that any patron is permitted access to any booth.

H. It shall be the duty of the operator and employees on the premises for furthering the business, not including independent contractors on the premises for repairs or construction to ensure that the illumination in booths, described in Section 6.54.050(A)(1)(b)(v) is maintained at all times that any patron is present on the premises.

I. No operator shall allow openings of any kind to exist between booths, and no person, including entertainers and employees shall make or attempt to make an opening of any kind between any booths.

J. The operator or his/her designee shall, during each business day, regularly inspect the walls between the booths, to determine if any openings or holes exist. If such openings exist it is the duty of the operator to repair the damage as soon as possible. No patron shall be permitted access to a booth, where an opening or a hole exists. It shall be the duty of the operator to ensure those booths are unoccupied by patrons until the opening is repaired or covered. (Ord. 99-1814 § 48, 1999; Amdt. 1 § 10 with Ord. 99-1503 §§ 75 – 84, 1999; Ord. 97-1022 §§ 63 (part), 69 – 73, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.140 Prohibitions and unlawful sexual acts.

A. No operator, entertainer or employee on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, of a sexually oriented business shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia on the premises.

B. No operator, entertainer or employee on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any entertainer, operator or employee.

C. No customer shall be permitted to have any physical contact with any entertainer on the licensed premises while the entertainer is engaged in a performance of live sexually oriented entertainment. All performances of live sexually oriented entertainment shall only

occur upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest customer.

D. Only one individual shall occupy a booth at any time. No occupant of a booth shall engage in any type of copulation, masturbation or the display of specified anatomical areas as defined herein or cause any bodily discharge of urine, feces or semen while in the booth. No individual shall damage or deface any portion of the booth.

E. Live sexually oriented entertainment shall not be permitted in booths.

F. No customer shall invade the three-foot boundary from the outer edge of the stage as required to be designated by Section 6.54.050(A)(3). (Ord. 99-1814 §§ 49, 50, 1999; Ord. 99-1503 §§ 85 – 87, 1999; Ord. 97-1022 § 63 (part), 1997; amended during 9-97 supplement; Amdt. 7 (part), Amdt. 6 §§ 3, 4 and Amdt. 4 with Ord. 97-796 § 2 (part), 1997)

6.54.150 Revocation or suspension of license/permit.

A. The board shall revoke a license for any of the following reasons:

1. Discovery that false or misleading information or data was given on an application, or material facts were omitted from an application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

2. The licensee was or has become ineligible to obtain a license under Section 6.54.050(B);

3. Any cost or fee required to be paid by this chapter is not paid;

4. The licensee knowingly employs, or with due diligence should have known that licensee was employing, an entertainer who does not have a permit. The licensee knowingly provides, or with the exercise of due diligence should have known the he/she was providing, space on the premises whether by lease or otherwise to an independent contractor who performs or works as an entertainer without a permit;

5. The licensee sells, furnishes, gives, displays, or causes to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises. The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent, the licensee's employee, who is on the premises furthering the business of the licensee, from selling, furnishing, giving, displaying, or causing to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent, an entertainer to sell, furnish, give, display, or cause to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises;

6. The licensee knowingly denies, or thorough the exercise of due diligence should have known that he/she was denying, access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to

any portion of the licensed premises wherein sexually oriented material is displayed or sold.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent, his/her employee, who is on the premises furthering the business of the licensee, to deny access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent an entertainer to deny access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold;

7. The attempted transfer of a license or any interest in a license;

8. If an application for a license or a renewal of a license was denied and that administrative denial was appealed and upheld by a court after adjudication on the merits then that license shall be revoked on the effective date of the court's judgement.

9. The licensee fails to maintain the licensed premises in a sanitary and safe condition by allowing continuing violations of Chapter 6.54.

A continuing violation shall mean more than two judgements from the board, unless the decision of the board is appealed and overturned, that the licensee

violated Chapter 6.54 within a twenty-four-month period, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the violation has been continuing until such time as the judgment of the board is reversed.

The licensee may affirmatively prove as a defense to an alleged violation of Chapter 6.54 that the licensee did not know, or through the exercise of due diligence could not have known that his/her employees' acts or an entertainer's acts would violate Chapter 6.54. If the licensee knew or should have known that his/her employees' acts or an entertainer's acts were violating any subsection of Chapter 6.54, the licensee may still affirmatively prove as a defense to the violation that the licensee was powerless to prevent the continuing unsafe or unsanitary condition.

10. Continuous Violations of Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030. Continuous violations shall mean that the licensee had more than two judgements entered against him/her for violating Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four month period, not including periods of suspension. The fact that the trial court's judgement is being appealed shall have no effect on the revocation until such time as the judgement of the trial court is reversed.

B. The board shall either fine, suspend or fine and suspend a license for any of the following reasons, that are not sufficient grounds for revocation:

1. The licensee fails to maintain the licensed premises in a sanitary or safe condition by allowing a violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030.

The licensee may affirmatively prove as a defense to an alleged violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 that he/she did not know, or through the exercise of due diligence could not have known of his/her employee's acts or omissions or an entertainer's act or omissions. If the licensee knew or should have known that his/her employee or an entertainer was violating any such subsection of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030, the licensee may still affirmatively prove as a defense to the alleged violation that he/she was powerless to prevent the unsafe or unsanitary condition.

2. Upon the first violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the licensee shall either be fined five hundred dollars or his/her license shall be suspended for a period no less than five days and no longer than thirty days or the licensee shall be both fined five hundred dollars and his or her license suspended for a period of not less than five days and no longer than thirty days.

3. Upon the second violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the license shall be suspended no less than thirty-one days and no longer than ninety days.

A second violation of Chapter 6.54, shall mean a prior judgement from the board, unless the decision of the board is appealed and overturned, that the licensee violated

Chapter 6.54 within a twenty-four-month period, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the violation occurred previously until such time as the judgment of the board is reversed.

A second violation of Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 shall mean a judgment from a trial court that the license violated Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030. The fact that a trial court's judgment is being appealed shall have no affect on the suspension and the judgment shall be treated as a violation until such time as the judgment of the trial court is reversed.

C. The board shall revoke a permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

2. The permittee has become ineligible to obtain a permit under Section 6.54.080A;

3. Any cost or fee required to be paid by this chapter is not paid;

4. The permittee provides sexually oriented entertainment on the premises of an operator who he/she knows, or with the exercise of due diligence should have known, does not have a license;

5. The permittee knowingly, or with the exercise of due diligence should have known that he/she, sells, furnishes, gives, displays, or causes to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the premises;

6. The permittee knowing'y denies, or through the exercise of due diligence should have known that he/she was denying access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold;

7. The permittee attempted to transfer his/her permit or any interest in his/her permit to someone else;

8. The application for a permit or the application for the renewal of a permit was denied and that administrative denial was appealed and upheld by a court after adjudication on the merits;

9. The permittee repeatedly fails to comply with the provisions of Chapter 6.54. Repeatedly fails to comply shall mean that the permittee has been found by the board to have violated Chapter 6.54 more than twice within a period of twenty-four months, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the permittee has repeatedly failed to comply until such time as the judgment of the board is reversed.

D. The board shall suspend a permit for any of the following reasons that are not grounds for revocation:

1. The permittee violates Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030.

2. Upon the first violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the permittee shall either be fined five hundred dollars or his or her permit shall be suspended for a period no less than five days and no longer than thirty days or the permittee shall be both fined five hundred dollars and his or her permit suspended for a period of no less than five days and no longer than thirty days.

Upon the second violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the permit shall be suspended no less than thirty-one days and no longer than ninety days.

E. The board shall follow the following procedure for revoking or suspending a license or a permit.

1. Before revoking or suspending any license or permit the board shall give the operator or entertainer five days' written notice of the alleged violation(s) against him/her. In such cases the charges shall be specific and in writing except under Section 6.54.150(A)(7), (8) and Section 6.54.150(C)(7), (8) of this chapter.

2. The board shall hear all the evidence pertaining to the revocation or suspension at the next regular meeting.

The next meeting shall be held no later than fifteen days after the notice described above is mailed. The licensee/permittee may present evidence bearing upon the question of suspension/revocation.

3. If the licensee/permittee fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board on the citation. Failing to appear before the board will not preclude the licensee's/permittee's right to appeal any revocation/suspension to the chancery court of Davidson County.

4. If the licensee/permittee requests a hearing, the license/permit shall remain in effect and valid during the appeal to the board until such time as the hearing is held.

5. Any adverse administrative decision to suspend or revoke a license/permit that is appealed to the circuit or chancery courts of Davidson County shall not take effect until the administrative decision has been upheld by the court after adjudication on the merits. Adverse decisions of the board which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

6. The revocation/suspension of a license/permit may be appealed to the circuit or chancery courts of Davidson County by the licensee/permittee. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within seven days from the grant of the writ of certiorari.

F. Any operator or entertainer whose license or permit is revoked shall not be eligible to receive a license or permit for one year from the date of revocation. (Amdt. 1 §§ 11-13 with Ord. 99-1503 § 88, 1999)

6.54.160 Penalties and prosecutions.

A. Any individual, partnership or corporation violating any of the provisions of this chapter shall be subject to any of the following penalties:

1. Five hundred dollars for each offense; and/or

2. A suspension of any license/permit for a specified period of time for each offense listed in Section 6.54.150B or D; or

3. Revocation of any license/permit for any conduct listed in Section 6.54.150A or C.

B. The penalty of suspension may not be combined with revocation. A fine alone can be a penalty or it may be combined with a suspension.

C. Each violation of this chapter shall be considered a separate offense and any continuing violation shall be considered a separate offense for each day of the violation. (Ord. 99-1503 §§ 89, 90, 1999; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.170 Invalidity of part.

Should any court of competent jurisdiction declare any section, clause or provision of this chapter to be unconstitutional, or any other ordinance of the metropolitan

government unconstitutional, such decision shall affect only such section, clause, provision or ordinance so declared unconstitutional, and shall not affect any other section, clause or provision of this chapter. (Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

CERTIFICATION

I, Marilyn S. Swing, being the duly appointed Metropolitan Clerk of The Metropolitan Government of Nashville and Davidson County, do hereby certify that the foregoing is a true and exact copy of **CHAPTER 6.54** of the Metropolitan Code of Laws as adopted by Ordinance No. BL2004-420.

WITNESS MY HAND and the Seal of the Metropolitan Government of Nashville and Davidson County, Tennessee, this 10th day of December, 2004.

/s/ Marilyn S. Swing
Metropolitan Clerk

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Sworn to and subscribed before me, by Marilyn S. Swing this 10th day of December, 2004

/s/ Vicki L. Lang
Notary Public

My Commission expires: 03/26/05

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC. a Tennessee Corporation; MICHAEL RUCKER, individually, MICHAEL BUTLER, individually; MERONEY ENTERTAINMENT, INC., d/b/a KEN'S GOLD CLUB, a Tennessee corporation, THE PLEASURE PALACE, INC. a Tennessee corporation; CAROUSEL AMUSEMENT CENTER, INC., a Tennessee corporation; DAWN PIERCE and ELIZABETH MARTZ, individually, Plaintiffs, v. METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE; EMMITT TURNER, Chief of Police of the Metro Police Department Defendants.	CIVIL ACTION NO. 3-97-106 JUDGE NIXON

VERIFIED COMPLAINT FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT

(Filed Oct. 17, 1997)

1. This is a civil action whereby Plaintiffs pray for a preliminary and permanent injunction enjoining the

Defendants from enforcement of Chapter 6.54 of the Code of Ordinances of the Metropolitan Government of Nashville and Davidson County, Tennessee (hereinafter "Chapter 6.54" or the "Ordinance"), passed on third reading by its Metropolitan County Council on August 19, 1997, on the ground that this Ordinance is unconstitutional on its face and as applied, and in its threatened application to Plaintiffs in their activities described below. Further, Plaintiffs pray for a declaratory judgment to determine the constitutionality of said Ordinance on its face, as applied to Plaintiffs, and in its threatened application to them, and Plaintiffs also request attorney fees as a result of the injuries sustained to their fundamental constitutional rights.

* * *

21. Plaintiffs aver that the licensing scheme as a whole is unconstitutional on its face, or as applied, because of the lack of procedural safeguards. It violates due process and is overbroad. It further violates equal protection. In addition, individual provisions of the Ordinance are unconstitutional or unconstitutional as applied to the Plaintiffs. The licensing scheme as a whole and the individual provisions thereof violate one or more of the following grounds:

* * *

(B) It is a prior restraint on speech in violation of the First Amendment and Article 1, Section 19 of the Tennessee Constitution.

(C) It is overbroad in violation of the First Amendment and Article 1, Section 19 of the Tennessee Constitution.

(D) It is overbroad and is a content-related statute and not a content-neutral time, place and manner regulation.

(E) If the Ordinance could be construed as a content-neutral time, place and manner regulation, it is overbroad in violation of the free speech provisions of the United States and Tennessee Constitutions because it applies to premises, places, and modes of communication which are not likely to produce the secondary or undesirable effects the Ordinance was intended to prevent. It improperly restricts expressive conduct protected by the First Amendment and Article 1, Section 19 of the Tennessee Constitution.

(F) It is unconstitutionally vague and indefinite in violation of the First, Fifth and Fourteenth Amendments and Article 1, Section 19, Article 1, Section 8 and Article 11, Section 8 of the Tennessee Constitution.

* * *

(H) It grants unbridled discretion to officials to deny, revoke and suspend licensing and permits and is not narrowly tailored as required for rights protected by the First Amendment.

* * *

(J) If the Ordinance could be construed as a content-neutral time, place and manner regulation, it does not further a substantial government interest, is not unrelated to the suppression of free speech and is not narrowly tailored.

* * *

(L) The Ordinance violates the First and Fourteenth Amendments and Article 1, Section 8, Article 11, Section 8 and Article 1, Section 19 of the Tennessee Constitution in that it is unconstitutionally vague in its definitions and in many of its undefined terms.

* * *

(O) The Ordinance and particularly the limitation of hours of operation are invalid in that they are not based upon a proper consideration of secondary effects. While the preamble and certain provisions of the Ordinance states evidence was presented to justify or identify secondary effects, there is no justification for closing hours adopted for Sundays as well as for hours generally nor to justify other restrictions in the Ordinance. . . .

* * *

(S) The Ordinance was passed pursuant to an illegal and impermissible motive in order to ban adult entertainment within Metro.

* * *

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al,	)	
Plaintiffs,	)	
vs.	)	
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al,	)	CASE NO. 3:97-1066
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE ALETA A. TRAUGER

DATE: JANUARY 27, 1999

TIME: 2:00 P.M.

REPORTED BY: BEVERLY E. "BECKY" COLE, RPR CCR
OFFICIAL COURT REPORTER
A-837 U.S. COURTHOUSE
NASHVILLE, TN 37203
(615) 254-6727

[2] APPEARANCES

FOR THE PLAINTIFFS: BRADLEY J. SHAFER
ANDREW WILKINS
Shafer & Associates
Lansing, Michigan

MICHAEL F. PLEASANTS
Memphis, Tennessee

JOHN HERBISON
Nashville, Tennessee

FOR THE DEFENDANTS: FRANCIS YOUNG
JAMES CHARLES
SHAYNA ABRAMS
Metropolitan Government of Nashville
Nashville, Tennessee

HENRY SIRKIN
Sirkin, Pinales & Schwartz
Cincinnati, Ohio

* * *

[4] MR. PLEASANTS: If Your Honor please – if I may approach the podium – Mr. Shafer will deliver the principal portion of our argument, there is one preliminary matter that I must bring to Your Honor's attention.

And it has been an evolving matter as our investigation has attempted to proceed, and that is the issue of whether Your Honor should consider disqualifying yourself based upon what we now understand to be your former employment as chief of staff for the Metropolitan Government and assistant to the current mayor, Mayor Bredesen.

It is has also come to our attention, and not that – we have no privy knowledge of this, it's just simply said to be a matter of common knowledge among the Nashville Bar, that your husband, Mr. Byron Trauger, is also counsel, personal legal counsel, to the Honorable Mayor Bredesen; and that for these reasons, there is a possibility of an appearance of impropriety or as set out in the statute that governs this, Section 455 of Title 28, that it might provide

a basis upon which impartiality might reasonably be questioned.

Further, what I believe to be a curiosity but I would respectfully ask Your Honor to enlighten us on this, in attempting to pursue an investigation, I consulted the [5] current edition of Martindale Hubbell in our office, the 1999 edition, and was – although I know Martindale Hubbell makes errors, in this case they have Your Honor listed – at this time the current Martindale Hubbell – as chief of staff to Metropolitan Government.

THE COURT: They do make mistakes, don't they?

MR. PLEASANTS: So I didn't know how somehow or another there could have endured a relationship, Your Honor, or Your Honor hasn't been reading your junk mail from Martindale Hubbell.

So we direct these matters to Your Honor's attention. If there is anything we need to know about, we respectfully request that Your Honor make any such disclosure as might be appropriate under the circumstances.

THE COURT: Oh, absolutely. I was chief of staff not to Metropolitan Government. I was chief of staff to the Mayor from September 1 of '91 until – actively until the end of April of '92, and then I went on leave for about three months, and then I resigned, with a small child.

So I was there seven months. I do have a friendship with the Mayor. He is a friend. My husband is his personal attorney. He does not do work for the Metro Legal Department. He is his personal attorney.

In the last five years, I do not believe I have ever recused myself in a matter involving Metro because the [6] Mayor's credibility or anything that – the Mayor's credibility was never an issue. Nothing that I ever worked on at Metro came before me. This was my five years as a bankruptcy judge.

In my two months as a district court judge, I am probing carefully with the lawyers in status conferences and in initial case management conferences whether there is anything in the case that happened when I was in the Mayor's office that I would have had any relationship to whatsoever and also whether anybody connected to Metro, primarily the Mayor, is going to be a witness or if in any way his credibility is an issue.

And just as an example, I had a case a couple of weeks ago, and they told me the Mayor was going to be a witness, but they ended up saying, well, it's not going to be disputed testimony; they have ended up stipulating to what the Mayor's testimony would be.

It's not any kind of a credibility issue at all. It was just some facts that needed to get in. And so even in that case, I'm not recusing myself.

Metro certainly is a litigant in federal court very often. I'm sensitive to my colleagues being – having being foreclosed on in all Metro cases, and so I have – I have never done it.

This ordinance I had absolutely no connection with.

[7] And in my hours and hours and hours, and I wish you folks had raised this a whole long time ago, but in all my preparation for today's hearing, I have not come across anything that has caused me to in any way think there

was – you know, that the Mayor – the Mayor was even invested in this ordinance in any way.

You all have sought, I think, to take discovery from councilmen in terms of their intent on passage of the ordinance, and so forth, but I saw nothing where you were attempting to get any kind of discovery from the Mayor.

As I say, I had no connection with this ordinance at all when I was at Metro some eight years ago, so I haven't really seen anything that has caused me to really question it.

But if you have – I mean, if you have anything else that you know that I haven't discussed, please tell me. I mean, is there any other –

MR. PLEASANTS: No, Your Honor.

THE COURT: Was there anything happening in this area in the time I was chief of staff that would have touched on this? I'm just am not aware of it.

MR. SHAFER: Your Honor, the only thing I'm aware of is that, you know, back in 1989 my office had a prior ordinance invalidated, and whether or not there was anything going on in the interim before this thing came up [8] in 1997, I don't know.

THE COURT: Yeah, that was under the previous Mayor.

I did – my antenna did go up when I saw that you had some interest at some point in the – how the people were selected for the board, and I know the mayor makes those selections.

And if you were going to question, you know, who was selected or why, or any of that, and that seems to have gone away, at least I don't see that as an issue you are pursuing –

MR. SHAFER: Well, Your Honor, actually – and I'm not trying to invoke this merely on this issue. But as I told you when we were here last time, you do have before you our motion for review in regard to Magistrate Griffin's ruling on the discovery. And, in fact, that is one of the issues that we are asking the court to review.

Now, I'm not going to tell you that it was ever my intent to specifically take a deposition of the Mayor. We would have, and did, request a 30(b)(6) deposition notice.

I assume the Mayor has people on his staff who are familiar with these facts. So I'm not – you know, merely for purposes of this motion, I'm not going to tell you it was ever my intent to depose the mayor. We just submitted a 39(b)(6) deposition notice on that issue.

[9] THE COURT: On why he picked the people that he picked?

MR. SHAFER: Yes, Your Honor, what their criteria was; you know, why – what was involved in the decision, you know, concerning this; what are their qualifications for making these decisions.

THE COURT: Okay.

MR. SHAFER: You know, were these people picked out of just whole clothe, are these really just political appointments, are they – and what is most important to us, are these people who are against these type of businesses.

You know, that is a discovery issue that, A, is currently before the court; and, B, may come back – may be revisited because there are certainly – discovery is certainly not done on this case, at least from our perspective.

And that, I believe, was acknowledged in one of Magistrate Griffin's more recent rulings about the fact that she was knocking off the discovery deadline because there might be discovery.

We were previously addressing merely discovery issues relating to this motion and the motion to lift the injunction; and, therefore, those discovery deadlines have been somewhat indefinitely extended.

And it's my understanding from the time the initial [10] board was constituted and then there was an injunction for approximately a year based on Judge Nixon's ruling that a lot of the board members have now changed.

I don't have the exact numbers, or anything, but my understanding is a lot of members have left, new members have been brought in, and at some point we're going to want to know why these people were picked.

* * *

[12] THE COURT: And so let's say that – let's say that these – tell me if the discovery on that issue, if it were the best for you that it could be, and I'm not sure what that would be, but let's say that you discovered who those people were and how they were appointed and – what would be your strongest argument with relation to that point?

MR. SHAFER: Both a procedural and a substantive due process argument.

THE COURT: Yeah.

MR. SHAFER: And I'll tell the court specifically, this is totally uncharted waters. And the [13] reason for that is very simple. The court has in front of it God knows how many adult zoning and licensing cases. All of those dealt with the government making the decision.

You know, you go down to the police department, you file your application. None of them that I'm aware of dealt with some type of quasi – governmental quasi, you know, public board of people from the community that are making these calls.

And so, yes, the argument would be procedural and substantive due process. If, in fact, the argument is that they are stacking the deck for people who are – for example, members of citizens for decency through law who go to classes to learn how to answer questions in jury voir dire to get on an obscenity case, yeah, we would have a problem with that. And we would claim that there is a clear intent now to impact upon our First Amendment rights.

THE COURT: Okay. Okay.

* * *

THE COURT: Okay. I see what your argument could be. I am intimately familiar with how this mayor makes appointments to boards. I have no familiarity with how he made the appointments to this board, although I do [14] know one of the people that was originally appointed to the board, who may or may not still be a member of the board.

I can see how that argument could arise at some point in this case. It's not here today, but I see that it could arise at some point in the case.

MR. SHAFER: And it would have been had we been able to get the discovery we wanted.

THE COURT: Yeah. This is not under the code of judicial ethics a mandatory recusal, as I see it. There are certain categories of mandatory recusal, and then there is another whole category of recusal based upon the appearance of things.

And in that category, there is a remittal procedure, and I don't know if you're familiar with that remittal proceedure?

MR. SHAFER: I'm not.

* * *

[15] THE COURT: It's a kind of a waiver. And what you do is you present the parties with the form, and then they go talk to their clients and disclose to their clients what the various issues are and then the parties can decide.

But given the nature of what you have told me today, I'm not going to give you the remittal form. I – I am not comfortable if you – if I have to make a decision whether or not you are allowed to get into the whole issue of the appointment process, if I have to make that decision, and it sounds like I will have to make that decision, I was very close to that process at one time with this mayor, so I'm not comfortable.

I'm not comfortable anymore, and so I am going to recuse myself.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al., Plaintiffs, v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al., Defendants.	No. 3-97-1066 Judge Nixon Magistrate Judge Griffin
	Consolidated Cases
JERRY C. PENDERGRASS, et al., Plaintiffs, v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al., Defendants.	No. 3-97-1176 Judge Nixon Magistrate Judge Griffin

BRIEF IN SUPPORT OF PLAINTIFFS' SECOND MOTION FOR PRELIMINARY INJUNCTION

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* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al., Plaintiffs, v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al., Defendants.	No. 3-97-1066 Judge Nixon Magistrate Judge Griffin
JERRY C. PENDERGRASS, et al., Plaintiffs, v. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al., Defendants.	Consolidated Cases No. 3-97-1176 Judge Nixon Magistrate Judge Griffin

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NOTICE OF DEPOSITIONS OF REPRESENTATIVES OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

Plaintiffs, Deja Vu of Nashville, Inc., a Tennessee corporation, Michael Rucker, Michael Butler, Meroney Entertainment, Inc., d/b/a Ken's Gold Club, a Tennessee corporation, and the Pleasure Palace, Inc., a Tennessee corporation, by and

through counsel and pursuant to Fed.R.Civ.P. Rule 30(b)(6), hereby give notice of the deposition of the Government of Nashville and Davidson County. The deposition(s) shall commence on a date and at a time agreed to by the parties and as approved by the District Court, at the law offices of John Herbison, 2016 Eighth Avenue South, Nashville, Tennessee 37204, and shall continue from day-to-day until completed.

You are to designate and produce for deposition one or more officers, directors, or managing agents, or other persons who consent to testify on behalf of the Metropolitan Government of Nashville and Davidson County, who possess the knowledge to testify on its behalf in regard to the following matters:

1. The initial proposal of and subsequent drafting, revisions, adoption, and enactment by the Metropolitan Government of Nashville and Davidson County of the ordinance to amend Title 6 of the Metropolitan Code of Laws by adding a new Chapter 6.54 (hereinafter referred to simply as "Chapter 6.54").

2. The initial proposal of and subsequent drafting, revisions, adoption, and enactment of any amendments by the Metropolitan Government of Nashville and Davidson County to Chapter 6.54.

3. Any and all documents[1] submitted to the Metropolitan Government of Nashville and Davidson County

[1] The term "document" as used herein means any memorandum, report, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, notebook, diary, correspondence, entry, telegrams, letter, ledger, advertisement, brochure, circular, tape, record, bulletin, paper, book, pamphlet, account, photograph, report, analysis, calculation, and any other written, typewritten, handwritten or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound recordings or transcripts thereof, however produced or reproduced, and all copies of facsimiles of such documents by whatever means made.

and/or to the Council of the Metropolitan Government of Nashville and Davidson County regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, revisions, adoption, and enactment by the Metropolitan Government of Nashville and Davidson County Chapter 6.54.

4. Any and all documents submitted to the Metropolitan Government of Nashville and Davidson County and/or to the Council of the Metropolitan Government of Nashville and Davidson County regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, revisions, adoption, and enactment of any amendments to Chapter 6.54.

5. Any and all documents relied upon by the Metropolitan Government of Nashville and Davidson County and/or the Council of the Metropolitan Government of Nashville and Davidson County regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, revisions, adoption, and enactment by the Metropolitan Government of Nashville and Davidson County of Chapter 6.54.

6. Any and all documents relied upon by the Metropolitan Government of Nashville and Davidson County and/or the Council of the Metropolitan Government of Nashville and Davidson County regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, revisions, adoption, and enactment of any amendments to Chapter 6.54.

7. Each and every governmental interest meant to be furthered by the provisions of Chapter 6.54.

8. Each and every governmental interest meant to be furthered by any amendments to Chapter 6.54.

9. The purpose and intent behind the provisions of Chapter 6.54.

10. The purpose and intent behind any amendments to Chapter 6.54.

11. The manner by which the provisions of Chapter 6.54 further the governmental interests described in requests 7 and 8 above.

12. The manner by which any amendments to Chapter 6.54 further the governmental interests described in requests 7 and 8 above.

14. The method or manner by which the documents as referenced in requests 3 and 5 above establish that the provisions of Chapter 6.54 were meant to address the governmental interests as set forth in request 7 above.

15. The method or manner by which the documents as referenced in requests 4 and 6 above establish that any amendments to Chapter 6.54 were meant to address the governmental interests as set forth in request 8 above.

16. The method or manner by which the documents as referenced in requests 3 and 5 above establish that the provisions of Chapter 6.54 will in fact further the governmental interests as referenced in request 7 above.

17. The method or manner by which the documents as referenced in requests 4 and 6 above establish that any amendments to Chapter 6.54 will in fact further the governmental interests as referenced in request 8 above.

18. The definition and interpretation of any provisions of Chapter 6.54 which are not specifically defined in that ordinance.

19. The definition and interpretation of any provisions in any amendments to Chapter 6.54 which are not specifically defined in those amendments.

20. The creation of and appointment of persons to the "Sexually Oriented Business Licensing Board" as discussed in §6.54.020 of Chapter 6.54.

21. The purpose or purposes behind and the reasons for the Sexually Oriented Business Licensing Board adopting and enacting any rules, policies, or procedures pursuant to the authority conferred on it by Chapter 6.54 or any amendment thereto.

22. The provisions of, definitions applicable to, and interpretation of any and all rules, policies, or procedures either considered or enacted by the Sexually Oriented Business Licensing Board.

23. What effect, if any, that the zoning provisions as set forth in the Metropolitan Code of Law, which relate to sexually oriented businesses/establishments (as that term is generally defined in Chapter 6.54) have had within the City of Nashville and Davidson County on any perceived adverse secondary effects engendered by such businesses.

24. The evidence, materials, studies, judicial opinions, reports and articles referenced in Section 1(B) to Chapter 6.54 ("finding"), and how the same relate to:

A. The additional findings as contained in subparagraphs (B)(1) through (B)(32) of Section 1 of Chapter 6.54;

B. The necessity for the various provisions of Chapter 6.54 and any amendments thereto; and

C. How the provisions of Chapter 6.54 and any amendments thereto further any of the governmental interests referenced in requests 7 and 8 above.

25. The basis or bases for each of the preambles ("wherefore" paragraphs) and "findings" as set forth in Section 1(B) of Chapter 6.54, inclusive of the initial "findings" paragraph and subparagraphs 1 through 32 thereto (these various findings as contained in subsection "(B)" of Section 1 of Chapter 6.54, including the initial "findings" paragraph and subsections 1 through 32 inclusive, are referred to hereinafter as simply the "findings").

26. Any and all documents and information utilized, relied upon, or referenced in preparing the preambles (the "whereas" paragraphs) and findings to Chapter 6.54.

27. The method, manner, reason, or basis (or bases) as to why the findings support the enactment of each and every provision of Chapter 6.54.

28. The method, manner, reason, or basis (or bases) as to why the findings support the enactment of any amendments to the provisions of Chapter 6.54.

29. Any further preambles or additional findings (not limited to the definition of this word as set forth above) associated with any proposed or enacted amendments to Chapter 6.54.

30. Any and all documents prepared for the enforcement or interpretation of Chapter 6.54.

31. Any and all documents prepared for the enforcement or interpretation of any amendments to Chapter 6.54.

32. Criminal statistics and other records or information evidencing incidents of all criminal activity at or in the areas near businesses in Davidson County which are open and attract customers either on a 24 hour basis or during the hours between 2:00 a.m. and 6:00 a.m. on weekdays and between the hours of 3:00 a.m. and 12:00 noon on Sundays.

33. Information regarding the enactment and enforcement of similar laws which establish that the type of provisions found within Chapter 6.54 and any amendment thereto further the government interests discussed in requests 7 and 8 above.

34. The identities of each and every "adult entertainment establishment" (as that phrase was used in the original drafts of Chapter 6.54 and as was modified to refer to "sexually oriented business/establishment") located within Davidson County

35. The public disclosure policies and requirements regarding information supplied by license and permit applicants and their agents and representatives pursuant to the provisions of Chapter 6.54 and any amendments thereto.

36. Other businesses operating in Davidson County, or other individuals working in Davidson County, who/which are required to disclose and provide the information required by Chapter 6.54 in order to be able to obtain a permit or license to be able to work/operate within the County.

37. The method by which the license and permit fees, and the applicable renewal fees, were determined.

38. Closing hour requirements for businesses licensed by the Metropolitan Government of Nashville and Davidson County.

39. Any and all documents requested in Plaintiffs' Request for Production of Documents by Plaintiffs to Defendants previously submitted.

Dated: August 28, 1998

/s/ Bradley J. Shafer
Bradley J. Shafer, MI P36604
Shafer & Associates, P.C.
Attorneys for Plaintiffs
3800 Capital City Blvd., Suite 2
Lansing, Michigan 48906-2110
517-886-6560 – Telephone

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC. a Tennessee Corporation; MICHAEL RUCKER, individually; MICHAEL BUTLER, individually; MERONEY ENTERTAINMENT, INC., d/b/a KEN'S GOLD CLUB, a Tennessee corporation, THE PLEASURE PALACE, INC. a Tennessee corporation; CAROUSEL AMUSEMENT CENTER, INC., a Tennessee corporation; DAWN PIERCE and ELIZABETH MARTZ, individually,

Plaintiffs,

v.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE; EMMITT TURNER, Chief of Police of the Metro Police Department

Defendants.

CIVIL ACTION NO. 3-97-1066

CONSOLIDATED WITH 3-97-1176

JUDGE NIXON

MAGISTRATE JUDGE GRIFFIN

REQUEST FOR PRODUCTION OF DOCUMENTS BY PLAINTIFFS TO DEFENDANTS

TO: Metropolitan Government of
Nashville and Davidson County
and Emmitt Turner, Chief of
Police of Metro Police
Department, c/o Francis H.
Young, Shayna Abrams,
Metropolitan Attorneys
204 Metropolitan Courthouse
Nashville, TN 37201

John E. Herbison, Esq.
2016 Eight Avenue South
Nashville, TN 37204

H. Louis Sirkin, Esq.
920 Fourth and Race Tower
105 West Fourth Street
Cincinnati, OH 45202-2776,
Attorneys for Jerry C. Pendergrass,
The 822 Corporation and 421 Corporation
Plaintiffs in Intervention

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Deja Vu of Nashville, Inc., Michael Rucker, Michael Butler, Meroney Entertainment, Inc., Ken's Gold Club, The Pleasure Palace, Inc., Carousel Amusement Center, Inc., Dawn Pierce and Elizabeth Martz, Plaintiffs, hereby request that Defendants produce the documents hereinafter described and permit Plaintiffs or their agents and/or attorneys to inspect and copy said documents. You may comply with this request for production of documents by supplying copies of the requested documents to the undersigned counsel at the addresses below no later than May 24, 1998, and you shall file any objections to these requests by that date. In the alternative, you may comply with these requests for production of documents by permitting physical inspection and examination by Plaintiffs

and/or their agents and attorneys of the documents requested herein no later than May 24, 1998.

DEFINITIONS AND INSTRUCTIONS

1. This Request for Production shall be deemed continuing in nature, calling for prompt production by Defendant of any and all documents which come into its actual or constructive possession, trust, care or control at any time in the future, as well as any and all documents now in its actual or constructive possession, trust, care or control. The specificity of any request shall not be construed as reducing the scope of any more generalized request.

2. The term "document" as used herein means any writing, letter, opinion, printing, memorandum, report, compilation, survey, summary, evaluation, correspondence, list, directive, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, entry, telegrams, telefax, advertisement, brochure, circular, tape, record, bulletin, paper, book, pamphlet, account, photograph, magazine or newspaper article, records of meetings, conference records, telephone records, records or conversations or any other form of communication, journal, and any other written, typewritten, handwritten, or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound or video recordings or transcripts thereof, however produced or reproduced and all copies of facsimiles of documents by whatever means made.

3. The phrase "relating to" includes referring to, pertaining to, reflecting, embodying, connected with, commenting on, responding to, showing, describing,

analyzing, containing, having, discussing, or concerning in any manner or fashion whatsoever.

4. If you object to producing any documents otherwise requested herein on the basis of a claim of privilege, please:

A. Identify each such document with sufficient particularity as to author(s), addressee(s) or recipient(s), and the contents thereof so as to allow Plaintiff to bring the matter before the Court;

B. Identify all persons in possession of each such document;

C. State the nature of the privilege(s) asserted;

D. State in detail the factual basis for the claims of privilege.

5. The phrase "Chapter 6.54" as used herein shall refer to Davidson Metropolitan County Council Bill No. 097-796 passed on third reading by said Metropolitan County Council on August 19, 1997 and approved by the Honorable Phillip Bredesen, Metropolitan Mayor, on August 25, 1997, amending Title 6 of the Davidson County Metropolitan Code of Laws.

6. The phrase "Metropolitan Council" as used herein shall refer to the members of the Metropolitan County Council of the Metropolitan Government of Nashville and Davidson County, as well as the staff, employees, agents and attorneys of the Metropolitan Council as a whole, any individual member thereof, and/or any council, committee or subcommittee.

DOCUMENTS TO BE PRODUCED

The Plaintiffs request that the Defendants produce and make available for inspection and copying, separately in response to each numbered paragraph, all documents which contain, in whole or in part, which refer to, in whole or in part, of which reflect, in whole or in part, information relating to the following:

REQUEST NO. 1: Please produce Section 2.01(40) of the Charter of the Metropolitan Government of Nashville and Davidson County.

REQUEST NO. 2: Please produce transcripts and/or tape recordings of any council or council committee hearings at which evidence concerning the adverse secondary effects of adult uses on the community was presented to the Metropolitan Council in the course of its consideration and adoption of Chapter 6.54 and any amendments adopted, rejected or accepted from the time of its original introduction, its passage on third reading, its approval by Mayor Bredesen, and thereafter and transcripts and/or tape recordings of any council or council committee hearings or debates at which Chapter 6.54 or any proposed, adopted or rejected amendment was considered, debated or voted upon.

REQUEST NO. 3: Please produce any findings incorporated in the several court decisions listed in Section 1(B) of Chapter 6.54 which were relied upon by the Metropolitan Council in the adoption of Chapter 6.54 and which are not set forth in the printed version of the several cases referred to therein, to wit: *D.L.S., d/b/a Diamonds and Laces Show Bar v. City of Chattanooga*, 107 F.3rd 403 (Six Cir. 1997); *D.L.S., Inc., a/b/a Diamonds and Lace Show Bar v. City of Chattanooga*, 914 F.Supp. 193 (E.D. Tenn.

1995); *D.L.S., Inc. a/b/a Diamonds and Lace Show Bar v. City of Chattanooga*, 894 F.Supp. 1140 (E.D. Tenn. 1995); *City of Renten v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Colin A. Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976).

REQUEST NO. 4: Please produce all studies and judicial opinions concerning the adverse secondary effects of adult uses of the communities of Austin, Amarillo and Beaumont, Texas; Phoenix and Tucson, Arizona; Minnesota; Seattle, Washington, which were considered and relied upon by the Metropolitan Council in the adoption of Chapter 6.54.

REQUEST NO. 5: Please produce all reports from the police department and from the Department of Health of the Metropolitan Government of Nashville and Davidson County which the Metropolitan Council relied upon in consideration and adoption of Chapter 6.54.

REQUEST NO. 6: Any and all documents submitted to, relied upon or serving as bases for the several conclusions and/or findings of the Metropolitan Council contained in subparagraphs 1(B)1 through 1(B)32 of Chapter 6.54.

REQUEST NO. 7: Copies of any and all reports and recommendations from employees, citizens, other local governments, and other reputable sources as referred to in the third whereas clause on page 1 of Chapter 6.54 which support the conclusion set forth in said whereas clause that "locational criteria alone do not adequately protect the health and general welfare of the people of Metropolitan Nashville and Davidson County" or which support any other conclusion, determination or finding made by the Metropolitan Council in the drafting, consideration and

passage of Chapter 6.54, and any amendments thereto whether adopted before or after the passage of Chapter 6.54.

REQUEST NO. 8: Please produce copies of any and all reports, studies or evidence showing or demonstrating that there is not a connection or nexus between undesirable adverse secondary effects in adult entertainment establishments in Nashville and Davidson County or elsewhere or which show that adverse secondary effects produced by adult entertainment establishments such as those operated by Plaintiffs or in which Plaintiffs are employed are no greater than produced by other types of businesses such as convenience stores, gas stations and other places of business which are open and attract customers either on a 24 hour basis or during extended evening hours.

Respectfully submitted,

DEJA VU OF NASHVILLE, INC. a Tennessee Corporation; MICHAEL RUCKER, individually; MICHAEL BUTLER, individually; MERONEY ENTERTAINMENT, INC., d/b/a KEN'S GOLD CLUB, a Tennessee corporation, THE PLEASURE PALACE, INC. a Tennessee corporation; CAROUSEL AMUSEMENT CENTER, INC., a Tennessee corporation; DAWN PIERCE and ELIZABETH MARTZ, individually,

By: /s/ Michael F. Pleasants
Michael F. Pleasants
8 South Third, Suite 200
Memphis, Tennessee 38103
901/572-7332 – Telephone
901/573-7399 – Facsimile

By: /s/ Bradley J. Shafer, by MFP
Bradley J. Shafer
3800 Capital City Blvd., Suite #2
Lansing, Michigan 48906-2110
517/886-6560 – Telephone
517/886-6565 – Facsimile

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, Michael F. Pleasants, do hereby certify that I have served a true and exact copy of the request for production of documents of Plaintiffs to Defendants upon all counsel set forth on the first page of this request for production of documents by United States Mail, First Class postage prepaid, this 24th day of April 1998.

/s/ Michael F. Pleasants
Michael F. Pleasants

AGENDA

April 27, 1999

9:00 a.m.

METROPOLITAN ADULT ENTERTAINMENT BOARD

700 SECOND AVENUE SOUTH

HOWARD OFFICE BUILDING NASHVILLE

ELITE REPORTING SERVICES
ANGELA M. SYES, CCR
806 Porter Road
Nashville, Tennessee 37206
(615) 262-9592

[2] APPEARANCES

Mr. James Avril
Mr. Alan Banks, Sr.
Dr. Donald Boatright, Chair
Ms. Mary Martin Schaffner, Vice Chair
Reverend Becca Stevens
Ms. Leslie Shectner
Ms. Linda Borum

* * *

[10] Applications for adult entertainment licenses. Deja Vu of Nashville, 1214 Demonbreun Street.

[11] MS. BORUM: Our recommendation is that it does not comply with health inspections. Some of the items on that health inspection report is: To clean the couches, rest room walls, fixtures, shower stall; repair commode; provide covered waste containers. Charles, in his inspection, noted a violation of the 3-foot rule

MR. CHAIRMAN: All right.

MS. SCHAFFNER: I take it the fourth sheet back in the packet is the health inspection report?

MS. BORUM: That is correct.

MS. SCHAFFNER: And that inspection indicates that the couches need to be cleaned. Sanitation of the floors and the cubicles need to be improved. Covered waste containers need to be provided throughout the establishment. The commode in the dressing room needs to be repaired. The rest room walls and fixtures need to be cleaned. And the shower stall in the dressing room needs to be cleaned; is that right?

MS. BORUM: Yes, ma'am, that is correct.

MS. SCHAFFNER: Then . . .

MR. CHAIRMAN: Okay. So that it . . .

MS. SCHAFFNER: Then the inspector's report is the last sheet; is that right?

MS. BORUM: Yes, ma'am.

MS. SCHAFFNER: And the inspector's [12] finding upon inspection was that the dancers were in violation of the 3-foot rule; is that correct?

MS. BORUM: That is correct.

MS. SCHAFFNER: On the codes or building there was no findings since there were no booths; is that right?

MS. BORUM: Yes, ma'am, that is correct.

MS. SCHAFFNER: And as far as the police report, it was approved?

MS. BORUM: Yes, ma'am.

MS. SCHAFFNER: And the zoning was approved?

MS. BORUM: Yes, ma'am.

MS. SCHAFFNER: I move that we deny this application on the basis of the health inspection and the – this board's inspector's report.

MR. CHAIRMAN: It has been moved that we deny this report based on the – deny this application based on the inspector's report and this report from health.

Is there a second?

MS. STEVENS: Second.

MR. CHAIRMAN: Any discussions? All in favor signify by aye.

(All board members voted aye.)

[13] MR. CHAIRMAN: This application is denied.

* * *

[15] The next application is Pleasure Palace, 2407 Dickerson Pike.

Ms. Borum.

MS. BORUM: Our recommendation is that it does not comply with health codes. Some of those items were: Repair hand sink; clean walls and all air conditioning vents; clean storage areas; provide hand towels.

On your checklist sheet from Charles and myself, we received a late report yesterday afternoon from the building inspector who went out and made another inspection and approved the booth requirements.

MS. STEVENS: What does nonconforming mean?

MS. BORUM: Legally, "nonconforming" means that it was there prior to the funding. It's grandfathered in.

MS. SCHAFFNER: I take it that the building inspector's report disapproval since it . . .

MS. BORUM: It is marked disapproved on the checklist. I was handed the report about 5 until 4 yesterday afternoon.

MS. SCHAFFNER: Which disapproves or [16] approves?

MS. BORUM: That approves, as far as the building inspector.

MS. SCHAFFNER: So the only thing that's disapproved, then, is the health . . .

MS. BORUM: That is correct.

MS. SCHAFFNER: . . . report, which includes a need for repairing hand sink for the ease of cleaning; thoroughly cleaning the walls in booths and air conditioning vents in the hall; providing a minimum of 10-foot candles of illumination at the floor level in booths; cleaning up storage areas; eliminate all unnecessary items on lower level; and provide hand towels in the bathrooms; is that correct?

MS. BORUM: Yes, ma'am.

MS. SCHAFFNER: I move that this application be denied on the basis of the health report.

MR. CHAIRMAN: It has been moved that this application be denied on the basis of the health report. Is there a second?

MS. STEVENS: Second.

* * *

[26] MR. CHAIRMAN: The next is Club Platinum, 1711 Hayes Street.

MS. BORUM: We recommend disapproval. It does not comply with health code. Some of those items: Repair toilet; clean showers; eliminate storage that may attract rodents and insects.

MR. CHAIRMAN: Everything else is approved?

MS. BORUM: Yes, sir, everything else is approved.

MS. SCHAFFNER: So that includes repairing the toilet in the men's rest room, cleaning the floors along the lockers in the dressing room?

[27] MS. BORUM: That is correct.

MS. SCHAFFNER: Cleaning the showers in the dressing room, eliminating storage that may attract rodents and insects and cause – something.

MS. BORUM: Harborage.

MS. SCHAFFNER: What is harborage?

MR. CHARLES WATKINS: Places for rodents or insects to hide.

MS. SCHAFFNER: All right. I move this application be denied based upon the health inspection report.

MR. CHAIRMAN: Do we have a second?

MS. STEVENS: Second.

MR. CHAIRMAN: It has been moved and properly seconded that this application be denied based on the health inspector's report. All in favor say aye.

(All board members voted aye.)

MR. CHAIRMAN: Any nays? Application is denied.

* * *

[35] The next application is 21 Up Video, 3920 Lebanon Pike

Ms. Borum.

MS. BORUM: We recommend disapproval. It does not comply with zoning. It does not comply with health. Some of those items were: Provide covered trash cans, hot running water and hand towels in the rest rooms.

MS. SCHAFFNER: Am I understanding when you say it doesn't comply with zoning is that it is not within the adult entertainment –

MS. BORUM: It's not within the adult entertainment overlay.

[36] MS. SCHAFFNER: – overlay or is not grandfathered in; is that correct?

MS. BORUM: Correct.

MS. SCHAFFNER: And the health report found that all garbage storage containers didn't have tight fitting lids or covers. There was not hot running water at the hand sink in the rest room. And there weren't individual hand towels in the rest room: is that right?

MS. BORUM: Yes, ma'am, correct.

MS. SCHAFFNER: I move that the application of 21 Up Video at 3920 Lebanon Pike be denied on the basis of not in conformance of the zoning requirements and in addition is in violation of the health code.

MR. CHAIRMAN: Is there a second?

MS. STEVENS: Second.

MR. CHAIRMAN: It has been moved and properly seconded that this application be denied based on zoning report and the health report. Is there any discussion? All in favor signify by aye.

(All board members voted aye.)

MR. CHAIRMAN: Any nays? Okay. The motion carries. This application has been denied.

* * *

[38] Purple Onion I, 2807 Nolensville Pike.

MS. BORUM: We recommend disapproval. Even though they are not in the adult entertainment overlay, they are legally nonconforming, so they do comply with

zoning. They do not comply, though, with the booth requirement, no open sides. Walls not solid. Does not comply with health codes. Some of those items: Clean floors and walls; provide covered trash cans and hot running water.

MS. SCHAFFNER: Where is the – the report from? Who reports on the booths? Codes?

MR. CHAIRMAN: Codes.

MS. BORUM: Yes, ma'am, the building inspector. And that's on the third page, item three and six.

MS. SCHAFFNER: Number three: "Is access unobstructed by any door, gate, lock or any other control-type devices?" He checked no. Also checked no to all walls being solid without any openings, et cetera. In the summary report says it does not comply with the codes; is that correct?

MS. BORUM: Yes, ma'am, that's correct.

MS. SCHAFFNER: And as far as the health report, it says they need to clean the floors and walls in the rest room; provide covered trash containers and tight [39] fitting lids in the bathroom and common area; provide hot running water in the rest room, right?

MS. BORUM: That is correct.

MS. SCHAFFNER: So as far as this checklist goes, in fact, it should be health, no, right?

MS. BORUM: Correct.

MS. SCHAFFNER: And . . .

MS. BORUM: And the building disapproved.

MS. SCHAFFNER: Building disapproved.

MS. BORUM: Yes, ma'am.

MS. SCHAFFNER: But the zoning is grandfathered in, correct?

MS. BORUM: That is correct.

MS. SCHAFFNER: I move this application be denied on the basis of the failure to comply with health codes and building codes as contained in the codes inspector's report.

MR. CHAIRMAN: Is there a second?

MS. STEVENS: Second.

MR. CHAIRMAN: It has been moved and properly seconded that this application be denied. Is there any discussion? All in favor signify by aye.

(All board members voted aye.)

MS. STEVENS: I have a question for legal before we go on.

[40] MR. CHAIRMAN: This application is denied. Okay.

* * *

[45] The next application is Metro News, 822 5th Avenue South.

* * *

[47] MR. CHAIRMAN: Is there any discussions?

MS. STEVENS: I have a question on the health report. What happened to all that stuff that was [48] listed?

MR. BANK: Because they have approved it on the checklist.

MS. STEVENS: Just on the second page, third page.

MS. BORUM: Okay.

MR. BANKS: It said –

MS. BORUM: Yes, I'm sorry. That is disapproved, also for health. I'm sorry, I apologize.

MS. SCHAFFNER: I amend my motion.

MR. STEVENS: Thank you.

MS. SCHAFFNER: I withdraw that motion and move that the application be denied on the basis of the health violations, which include: The floors are not thoroughly cleaned throughout the facility and common areas and rest rooms and booths; walls on the upper floor leading to the booths and stairways were not clean; the lighting was insufficient; the lids and covers on the garbage cans were not tight fitting; there wasn't hot running water in the rest room in the basement and hand towels in the rest room in the basement, women's rest room. And, in addition, that it be disapproved on the basis of the applicant had been convicted of – what is the phrase for it?

MS. SHECTNER: Misdemeanor. Crime of a [49] sexual nature was a misdemeanor.

MS. SCHAFFNER: Misdemeanor crime of a sexual nature. For those reasons, I move it to be disapproved.

MR. BANKS: Mr. Chairman, could I ask one more question? On the guideline, if you'll turn the diagram. The bottom left it says, "Doors to video booths will be removed upon submission of license application." That may or may not have been done. I do know that on this diagram all the booths had doors on them.

MS. BORUM: The inspector's report is the fifth page.

MR. BANKS: I just needed something that says – okay. We didn't know we had that.

MS. BORUM: The summary report, "The business located complies."

MR. BANKS: Okay. So that we would refer to the building report, right?

MS. BORUM: That is right.

MR. CHAIRMAN: The motion you have before the board is that this application be denied based upon the background report of a misdemeanor sexual offense as well as the health inspector's report.

MS. STEVENS: Second.

MR. CHAIRMAN: Okay. All in favor – it [50] has been moved and seconded that we – all in favor signify by saying "aye."

(All board members voted aye.)

MR. CHAIRMAN: Any nays? This motion carries. This application is denied.

* * *

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al.,

Plaintiffs,

vs.

METROPOLITAN GOVERNMENT OF NASHVILLE, AND DAVIDSON COUNTY, TENNESSEE, et al.,

Defendants.

No. 3-97-1066
Judge Higgins

TRANSCRIPT OF PROCEEDINGS – PRELIMINARY INJUNCTION

VOLUME III of Three

BEFORE THE HON. THOMAS A. HIGGINS, U.S. District Judge

on April 15, 1999

APPEARANCES:

As hereinbefore noted.

[506] THE COURT: . . . And we have never really resolved this notice of filing. Is there any objection by the plaintiff to the court's consideration of this as evidence in the record?

MR. SHAFER: Which one? Is that the secondary effects?

THE COURT: It's 147.

MR. CHARLES: Yes, Your Honor, that's the secondary.

MR. SHAFER: No objection, Your Honor.

THE COURT: This is the information that was placed in front of the metropolitan council.

MR. CHARLES: That's correct, Your Honor.

THE COURT: All right. There is no objection –

MR. SHAFER: No objection.

THE COURT: – to the court's consideration of it. All right.

* * *

[507] MICHAEL W. RUCKER,

being previously duly sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. SHAFER:

Q. Mr. Rucker, we went through this before. You're the president and general manager of Deja Vu, correct?

A. That's correct.

Q. And was Deja Vu recently visited by the Metropolitan Government of Nashville and Davidson County Public Health inspectors about a week ago?

A. Eight days from today, correct.

Q. April 7th?

A. Correct.

Q. And was there a health report that was issued by the health inspectors in regard to that inspection?

A. That is correct.

Q. And was it given to you?

A. That's correct.

Q. Now, sir, in front of you we have marked in Exhibit No. 22. Has a sticker on the back of it.

[508] A. Right.

Q. Is that a copy of the report that the public health inspectors gave you a little over a week ago?

A. Yes, it is.

Q. Now, sir, I didn't mark the original, but the original's to your side, is that correct?

A. That's correct.

Q. All right. That's what we have marked now as Exhibit 22, is a true and accurate copy of that?

A. Yes, it is.

MR. SHAFER: Your Honor, I move for the admission of Exhibit 22.

MR. CHARLES: If Your Honor please, could I ask why we're just now being handed an exhibit that was completed on April 7th, 1999?

MR. SHAFER: Because ten minutes ago, Your Honor, the public health officials were again in Deja Vu and issued a new report which is markedly different. That

is going to be Exhibit 23, and this is what he has in front of him. It had no relevance until about ten minutes ago.

MR. CHARLES: I have no objection, Your Honor.

THE COURT: 22, health inspector report, dated April 7, '99, is received in evidence, without objection.

MR. SHAFER: Thank you, Your Honor.

BY MR. SHAFER:

[509] Q. Now, Mr. Rucker, what score did Deja Vu get on this health report that was done a week and a day ago?

A. Our score was a 99.

Q. Out of what?

A. One hundred.

Q. You lost one point, right?

A. That's correct.

Q. And what was that for?

A. We had a broken floor tile behind the bar.

Q. All right. Now, sir, you and I came back from lunch and went over to the club just a few minutes ago?

A. That's correct.

Q. And had the health inspectors once again visited Deja Vu?

A. That's correct.

* * *

Q. Mr. Rucker, is Exhibit 23 a copy of the document that was left by the health inspectors just moments ago at the [510] Deja Vu Club in regard to the additional inspection they did today?

A. That's correct.

Q. And the original, I apologize, I didn't ask the court clerk to make a copy of it, but the original that you have on the side of you, has the card stapled to it of the individual you just identified?

A. That's correct.

Q. All right.

MR. SHAFER: Your Honor, I move for admission of Exhibit 23. Plaintiffs' Exhibit 23.

MR. CHARLES: I have no objection, Your Honor.

THE COURT: 23 is a health inspector report dated 4-15-99, it's received in evidence, without objection.

MR. SHAFER: Thank you, Your Honor.

MR. CHARLES: Your Honor, would it be possible to refer to the two exhibits by their titles? Because they have –

THE COURT: Well, what is the proper title? I haven't seen the document, they have just been referred to as a health inspector report.

MR. CHARLES: May I approach the bench?

THE COURT: Sure. Pass it up. Well, the one dated 4-15-99 is captioned Metropolitan Health Department

of Nashville and Davidson County, Sexually Oriented Business [511] Inspection Report.

The one dated 4-7-99 is captioned Metropolitan Health Department of Nashville and Davidson County, Tennessee, Food Service Establishment Inspection Report.

All right.

MR. SHAFER: Thank you, Your Honor.

BY MR. SHAFER:

Q. Now, Mr. Rucker, I want to go into the remarks section of Exhibit 23. You see there's a number of things written down there?

A. Yes, I do.

Q. I want to start from the bottom and work my way up, okay?

When you had the inspection a week and a day ago, were there any concerns by the public health officials about clean shower stall in dressing room?

A. No, sir.

Q. When you had the public health inspection a week and a day ago were there any concerns raised to you about clean restroom walls and fixtures?

A. No, there was not.

Q. Mr. Rucker, when you had your inspection by the public health inspector a week and a day ago, were there any concerns expressed to you by that individual to repair commode in dressing room?

[512] A. No.

Q. Mr. Rucker, when you had the inspection a week and a day ago were there any concerns expressed to you to provide covered waste containers throughout?

A. No.

Q. How about floors must improve sanitation in floors in cubicles?

A. I have never heard that as well.

Q. How about clean couches in cubicles?

A. No.

Q. How about rest rooms?

A. No.

Q. What does that mean to you, the word rest rooms?

A. Well, I think that's the end of a sentence from the beginning.

Q. Oh, I'm sorry. You're right. Okay.

So the last, the first one actually is floors and walls must be light colored, non – absorbent, smooth textured and easily cleanable in each room and restroom, see that?

A. Yes, I do.

Q. That was not raised a week and a day ago, right?

A. No, it was not.

MR. SHAFER: Those are all the questions I have of Mr. Rucker, Your Honor.

THE COURT: All right.

* * *

[622] THE COURT: Mr. Young, anything by the defendant?

MR. YOUNG: I'll defer – well, Judge, we wanted to clear up at least one thing about the big thick book with the multi color tabs on it.

MR. CHARLES: Your Honor, may I respond?

THE COURT: That's Defendant's Exhibit 1, Docket Entry 147, evidence of secondary effects. Would it just simplify this to have a defendants' tag put on it right here in the lower left-hand corner and both be Docket Entry 147 [623] and also an exhibit in this evidentiary record?

MR. CHARLES: Yes, Your Honor.

THE COURT: All right. 1, without objection, is received in evidence.

MR. SHAFER: Yes, Your Honor, without objection.

THE COURT: Received 4-15-99. Put a defendants' one tag on it.

* * *

AGENDA

May 11, 1999

7:30 a.m.

METROPOLITAN ADULT
ENTERTAINMENT BOARD

700 SECOND AVENUE SOUTH

HOWARD OFFICE BUILDING NASHVILLE

ELITE REPORTING SERVICES
ANGELA M. SYES, CCR
806 Porter Road
Nashville, Tennessee 37206

(615) 262-9592

[2] APPEARANCES

Mr. Alan Banks, Sr.
Dr. Donald Boatright, Chair
Ms. Mary Martin Schaffner, Vice Chair
Reverend Becca Stevens
Ms. Shana Abrams
Ms. Linda Borum

* * *

[5] (Whereupon, the Metropolitan Adult Entertainment Board Meeting began at 7:30 a.m. on May 11th, 1999, and proceeded as follows:)

MR. CHAIRMAN: We'll go ahead and call the meeting to order of the Metropolitan Adult Entertainment Board, meeting for May 11th, 1999.

We're going to begin by opening up the agenda for discussion of requests for re-inspection.

Do you have those requests for re-inspection?

MS. BORUM: Yes, I do. Okay. We have a request from Ken's Gold Club at 500 5th Avenue South. We have a health inspection, and we also have a report from Mr. Watkins that they meet the requirements. And we recommend approval of this license.

* * *

[18] MS. SCHAFFNER: If the board were to give you some time to look into that, would you be willing to waive your time limits in writing?

KEN MERONEY: I need to ask counsel about that.

[19] UNKNOWN ATTORNEY: No.

MR. CHAIRMAN: Basically, we have the report from the codes inspector and the board's inspector.

Is there a motion from the board to approve the application? Is there a motion from the board to deny the application?

MS. SCHAFFNER: I move it be approved.

MR. CHAIRMAN: It has been moved. Is there a second that this application be approved? Is there a second?

MS. SCHAFFNER: It fails for want of the second; motion fails.

MR. CHAIRMAN: Motion fails for one of the second.

MS. STEVENS: Chairman, could I entertain a motion for it to be denied?

MS. BORUM: Could y'all all speak a little bit louder?

MR. CHAIRMAN: Your motion is what?

MS. STEVENS: I move, based on the codes report, based on the same reason that the motion was not ratified, it is still a booth and was not changed, and I move that the permit be denied.

MR. CHAIRMAN: We move that the permit be [20] denied on the basis of the codes inspector's report.

MS. STEVENS: And on the basis of the wall not being removed on the second floor.

MR. CHAIRMAN: There's a motion on the floor that the application be denied, the re-inspection application be denied. Is there a second?

MR. BANKS: I second that.

MR. CHAIRMAN: Is there any further discussion? All in favor that this application be denied signify by saying aye.

MR. BANKS: Aye.

MS. STEVENS: Aye.

MS. SCHAFFNER: Oppose

MR. CHAIRMAN: Two ayes, one oppose. Two to one opposed. So the motion is denied. Motion passes that this application be denied. The motion passes that this application be denied. The motion passes that this application be denied by a vote of two to one.

Let's move on to the next application.

* * *

METROPOLITAN ADULT
ENTERTAINMENT BOARD HEARING
700 Second Avenue South
Howard Office Building
Nashville, Tennessee 37201

Hearing: May 25 1999
Time: 9:00 a.m.

ELITE REPORTING SERVICES
MAX CURRY, B.C.R., CCR, CRI
Bachelor's Degree of Court Reporting
806 Porter Road
Nashville, Tennessee 37206

(615) 262-9592

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[2] APPEARANCES

BOARD MEMBERS PRESENT

MR. DONALD BOATRIGHT, Chair

MS. MARY MARTIN SCHAFFNER, Vice-Chair

MR. ALAN BANKS, SR.

REV. BECCA STEVENS

APPEARING FOR METRO

MS. SHAYNA ABRAMS

MR. JAMES CHARLES

* * *

[47] DR. BOATRIGHT: Okay. It's been moved and seconded that we issue Ken's Gold Club an ordinance.

MR. CHARLES: A license.

DR. BOATRIGHT: A license. All in favor signify by saying 'aye'.

MR. BANKS: Aye

MS. SCHAFFNER: Aye

[48] DR. BOATRIGHT: All – nay?

MS. STEVENS: Nay.

DR. BOATRIGHT: It's two to one. The motion carries.

* * *

[80] DR. BOATRIGHT: Thank you for your arguments. The Board will entertain a motion for approval.

MS. SCHAFFNER: I move that it be approved. In support of that I would like to say that I think – I continue to believe there is ambiguity about what booths are in the ordinance, which I fervently hope will be addressed.

While there is ambiguity, I think that we are obligated to rule in favor of the applicants and their rights and let the ambiguity be clarified by Metro, if it is the intent of the Metro Council to prohibit. At this point I don't think that this is sufficiently clear, and for that reason I move that it be approved.

[81] DR. BOATRIGHT: Is there a second?

(No response heard.)

DR. BOATRIGHT: Any discussion?

(No response heard.)

DR. BOATRIGHT: Okay. The motion failed for second and Deja Vu's license is denied on appeal.

MR. RUCKER: Thank you for your time.

THE CLERK: I need a motion to deny it.

DR. BOATRIGHT: Okay. Is there a motion to deny the application?

MR. BANKS: I make the motion to deny the application.

DR. BOATRIGHT: Is there a second?

MS. STEVENS: Yes.

DR. BOATRIGHT: All in favor of denying?

MS. SCHAFFNER: Can I ask your reason?

MR. BANKS: I believe under the definition in the ordinance, it would be remiss of me to look at this and say this is not a booth. I believe it is a booth, and I believe there can only be one person in a booth.

MS. SCHAFFNER: But what is the definition of booth you are using to base your judgment on?

MS. STEVENS: Well, what I was using partly was – when everyone was talking, you described these club areas; and, secondly, it seems like if they are saying, [82] yes, we comply because we don't have this wall here, then it makes sense that you're talking about a booth. That's

what everybody has been talking about the whole time we've been talking about it.

It seems like to me, as a Board member who is not from the legal profession, the best I can do is go by what my understanding of it is and go by the representations of the legal counsel we have been given.

MR. BANKS: Are these rooms, are these cubicles, are these closets, or are they booths?

MS. SCHAFFNER: I was just asking what definition you are using to call these booths?

MR. BANKS: These are separated from the general area. When – the other gentleman said, 'You know, this is really open and it's really just a part of the overall room; that you go in and' – I would assume if you do a table dance, you're going to pay for a private table dance. And I couldn't just walk up – walk in there and sit right next to somebody who paid for a private table dance. No, this is separated – a separated area from the general part of the – of the entertainment establishment; and, therefore, to me it's either a room or a booth, and I don't consider these rooms.

MS. SCHAFFNER: Okay.

MR. BANKS: And only one person can be in a [83] booth.

MS. STEVENS: I totally would love to have some clarification of this ambiguity cleared up, because it's very confusing.

DR. BOATRIGHT: Now, is there a second?

MS. STEVENS: Of what? For a motion to – we did it.

DR. BOATRIGHT: All right. She did it.

All in favor of denying the application signify by saying 'aye'.

MR. BANKS: 'Aye'.

MS. STEVENS: 'Aye'.

DR. BOATRIGHT: All in favor of.

MS. STEVENS: All opposed.

DR. BOATRIGHT: All opposed to the motion signify by saying 'nay'.

MS. SCHAFFNER: Nay.

DR. BOATRIGHT: Nay.

MS. STEVENS: Are you voting nay?

MS. SCHAFFNER: Well, I don't think you can vote acceptable.

MS. STEVENS: Can he vote?

MS. ABRAMS: (Shakes head negatively.)

DR. BOATRIGHT: It's two to one.

MS. STEVENS: The other thing I would like to [84] have on the record is what happened to the other Board member.

MS. SCHAFFNER: We have something else on the agenda.

MS. STEVENS: We do? What?

DR. BOATRIGHT: Another motion, Miko's.

MS. SCHAFFNER: Wait a minute. Okay.

DR. BOATRIGHT: Last thing – last item on the agenda is Miko's located at the 511 8th Avenue North. It was present at the last meeting. There was a request for withdrawing that application. Any change on that?

MR. KIRKLAND: I have not had any further communication from anyone, so I don't have anything further to offer this Board. I have not heard from Ms. Hunter. I have heard from Mr. Lynch. I have no reason to dispute Mr. Lynch's representation that he represents Ms. Hunter.

MS. SCHAFFNER: I would move that we withdraw.

MS. STEVENS: Seconded.

DR. BOATRIGHT: Is there a second?

MS. STEVENS: Yes, sir.

DR. BOATRIGHT: All in favor signify by saying 'aye'.

(WHEREUPON, responses of 'aye' were heard.)

[85] DR. BOATRIGHT: Okay. Motion carries.

* * *

[90] MR. COBB: Okay. This seems up to this point to be a constantly changing process, what – the

meaning of words change on an on-going basis, as we discussed this morning.

* * *

Sexually Oriented Business Licensing Board
700 2nd Avenue South
Nashville, TN 37201
615-862-6556

May 26, 1999

Mr. Mike Rucker
c/o Deja Vu
1214 Demonbreun Street
Nashville, TN 37203

Dear Mr. Rucker:

The Sexually Oriented Business Licensing Board met to consider your license application denial in response to you request for an evidentiary hearing on your previously denied application for a license to operate a sexually oriented business. This evidentiary hearing was held on Tuesday, May 25, 1999.

The Vice Chair made a motion to grant the application which failed for lack of a second. A board member then made a motion to deny the license application which received two votes for denial and two votes against denial.

Section 6.54.020(D)(3) states "The concurring vote of a majority of the members present and voting shall be necessary for the granting, revoking, suspending or any other action involving licenses or permits." Since the tie vote of two to two is not a "concurring vote of the majority". The license was neither approved or denied. Section 6.54.040(E) specifies that the Board must hold the hearing at the next regular meeting at which they shall affirm or reject the denial of the application.

Section 6.54.040(C)(3) states "If the board fails to meet in the time period specified or fails to have a quorum at the meeting, then the license shall be approved and sent to the applicant by United States Mail to the address listed on the application." Since the Board did not act on your application within fifteen days of your request for an evidentiary hearing, the license is granted.

/s/ Mary Martin Shaffner
Mary Shaffner, JD,
Vice Chair

Very truly yours,

/s/ Linda Borum w/permission
Linda J. Borum
Secretary, Sexually Oriented
Business Licensing Board

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DEJA VU OF NASHVILLE, INC., et al.,

Plaintiffs,

vs.

METROPOLITAN GOVERNMENT OF NASHVILLE, AND DAVIDSON COUNTY,

Defendant.

No. 3-97-1066
Judge Higgins

TRANSCRIPT OF PROCEEDINGS –
CASE MANAGEMENT CONFERENCE

BEFORE THE HON. THOMAS A. HIGGINS,
U. S. District Judge

on December 21, 1999

(Filed Jan. 14, 2000)

APPEARANCES:

Mr. Bradley J. Shafer
Attorney at Law
Lansing, Michigan,

Mr. Michael F. Pleasants
Attorney at Law
Memphis, Tennessee,

on behalf of Deja Vu and others;

Mr. John Herbison
Attorney at Law
Nashville, Tennessee,

on behalf of Pendergrass;

Mr. Francis Howard Young
Ms. Shayna R. Abrams
Attorneys at Law
Nashville, Tennessee,
on behalf of the Defendant.

[2] PROCEEDINGS

THE COURT: Have your seats, ladies and gentlemen. Call the case.

* * *

THE COURT: All right. Now, lady and gentlemen, what needs to be done in this case to get this case ready for trial?

MR. SHAFER: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. SHAFER: Two primary things I believe before the court's ruling on the preliminary –

THE COURT: I'm sorry?

[3] MR. SHAFER: Before the court's ruling on the preliminary injunction motion, metro government enacted 52 changes to the ordinance. Since the court's ruling, they have proposed an additional, I don't know, about another ten amendments, I'm sure Mr. Young can tell you the exact status that that's in.

My understanding is there is a City Council, County Council meeting tonight, I'm not sure if it's for a second or a third reading, but certainly before we try the case I

think I want to know exactly what the ordinances are we're dealing with.

So I believe that the court should at least give counsel an opportunity to finish up its ordinance, give the board whatever opportunity it wants to promulgate any type of new documents, rules or regulations so we would have that in hand to be able to try this.

The other thing is, Your Honor, we filed a motion back on November 4th of last year, it's Docket Nos. 65 and 66, the brief is 66, it's basically a discovery motion. A motion to review Magistrate Griffin's rulings on various discovery issues. We wanted such things as – we wanted someone, for example, to testify as to how various provisions of the ordinance were going to be interpreted, what some of the easements were for enacting some of the provisions, how the county believes that certain other [4] provisions will effectuate some of the governmental interests.

And if the court will recall during the lengthy evidentiary hearing that we had, I had Dr. Boatright, head of the Sexually-oriented Business Licensing Board, on the stand for the better part of a day, and at one point the court somewhat admonished me and said, Well, you know, Dr. Boatright's individual opinions are all well and good, but, I don't know (this was you saying this), I don't know what relevance that particularly has in regard to the constitutional issues here, at which time I pointed out to the court that we, in fact, had a pending motion because we wanted to take a 30(b)(6) deposition, make them bring in a deponent who would testify as to how certain provisions of the ordinance were to be interpreted and enforced.

* * *

[7] THE COURT: All of that is well and good. What do you need to do to get this case ready?

MR. SHAFER: Well, Your Honor, I need a ruling from the court in regard to our motion for review. That's number one.

I need to take whatever discovery this court is going to allow. Magistrate Griffin, in fact, –

THE COURT: What discovery do you need? What discovery do you say you need?

MR. SHAFER: Well, I believe I have already represented to the court previously when the court asked me this during the evidentiary hearing, I believe three or four depositions.

[8] THE COURT: Of whom?

MR. SHAFER: It would depend on what the court ruled and how the court ruled. It may be a 30(b)(6) deponent, it might be Mr. Boatright, it might be Mr. Watkins, it might be a representative of the SOB Board. It's really going to depend on how the court rules on the motion.

* * *

[13] THE COURT: Why shouldn't we try this case on the basis of the ordinance as amended as of the date that I acted on that preliminary injunction and bring this controversy to a conclusion and send it on to Cincinnati and then to Washington, if that's where it ultimately goes? Why should this court continue to be called upon to nibble at this matter in response to on-going amendments?

A lawsuit has to be crystalized at some point and cease being a moving target.

* * *

[14] THE COURT: Oh, you keep talking about that. That's the history of this thing as it was at the time I took my bite at it.

MR. SHAFER: No.

THE COURT: The amendments have already been made?

MR. SHAFER: No, Your Honor.

THE COURT: They were here before at the time I took my bite and wound up enjoining the enforcement of it, didn't I?

MR. SHAFER: No, Your Honor. After we had – they had made 92 amendments before you took your bite at the apple, after we spent the four days in an evidentiary hearing, but before you ruled they made 52 more amendments. They enacted those.

THE COURT: Oh.

* * *

[15] THE COURT: Well, what relief is it that you're seeking? When we have a trial in this matter or the alternative, just make my preliminary injunction a final injunction, enter final judgment, and permanently enjoin the ordinance as it existed at the time I acted and then ship this case on.

MR. SHAFER: Well, Your Honor, we would – we would ask the court to –

THE COURT: My injunction is it's enjoined from being enforced in the form and fashion in which the ordinance existed at the time I acted on the preliminary injunction. Why not make that the final order of this court and bring this case to a conclusion?

MR. SHAFER: Well, first of all, it really doesn't address any issue.

THE COURT: You're not asking for money damages, are you?

[16] MR. SHAFER: Not yet. I mean we may because there has now been –

THE COURT: Have you sued for money damages?

MR. SHAFER: Not yet.

THE COURT: When you keep saying not yet, are you anticipating an amendment, and assuming I'm going to grant it, but have you sued to this point for money damages?

MR. SHAFER: No, Your Honor.

THE COURT: Then the only relief sought in this matter is injunctive relief.

MR. SHAFER: That's right.

THE COURT: And I have granted preliminary injunction, injunctive relief, and as to the ordinance as it existed at the time I granted preliminary injunctive relief why shouldn't that order be made a permanent injunction and a final judgment –

MR. SHAFER: Well, –

THE COURT: – and end this matter and let the appeal from this matter be consolidated with the appeal, the interlocutory appeal from Judge Nixon?

MR. SHAFER: Well, Your Honor, because I don't think there would be anything to appeal, nor would I.

THE COURT: Well, you wouldn't be appealing because it's in your favor.

MR. SHAFER: Well, yes, Your Honor. But I don't [17] think they would appeal it either.

THE COURT: You don't know what they will do.

MR. SHAFER: Well, I don't, Your Honor.

THE COURT: You would have won the lawsuit.

MR. SHAFER: I would have won the lawsuit.

* * *

[19] MR. SHAFER: No, Your Honor, I believe not.

THE COURT: I'll hear you. Why shouldn't this matter come to a conclusion?

MR. YOUNG: Well, Judge, what strikes me is judicial efficiency. Now –

THE COURT: I tell you what the judicially efficient thing to do is to bring this case to a conclusion on the record as it was before this court and enter final judgment and if the Metropolitan Government wants to appeal, says it's aggrieved, then you would have your 30 days to file your notice of appeal. And then if there's going to be another controversy, you get your ordinance, get your

ducks in a row, you have been nibbling at – when I say you, the defendant, the government has been nibbling at it, the judges in this courthouse do something, then the Metropolitan Government Legal Department gets busy to try to [20] patch that up. Y'all are like plumbers over there. With regard to this adult business, dirty bookstore thing, hootchy-kootchy show places, you all are like plumbers, making emergency calls. When the weather gets 20 degrees, broken pipes and pipes are freezing all over town. The efficient thing is to bring some finality to a litigation. And why shouldn't this litigation as the court took it on the record as it was before the court be made final?

MR. YOUNG: Because, Judge, the nature of this litigation is attacking a local ordinance which by definition is a living, breathing thing and can change.

Now, Judge, I understand your position on it being a moving target. However, if all the time and effort that you have spent reading the three-foot high –

THE COURT: It's three times that.

MR. YOUNG: Okay. Well, to waste all that knowledge that you have gained in reading all the pleadings and in your exhaustive and painstakingly detailed memorandum.

THE COURT: From which you had a right to take an interlocutory appeal.

MR. YOUNG: Well, we're going to amend the ordinance, take care of problems that you set forth in your memorandum, and then since the plaintiffs have been required to list all their issues, told us the couple of instances

[21] that we have to change, we'll change them and, Judge, we would like to come back before you on summary judgment. We don't think we need a trial in this case.

* * *

[22] MR. YOUNG: . . . But it doesn't make any sense to freeze the record until we've had a chance to implement the changes that we have enacted.

THE COURT: It may not make any sense to you, but I have spent ten minutes now articulating the sense it makes to me. There needs to be a winner and a loser in this case and get on with it, and then if there has to be another lawsuit with the ordinance as it's recast, then whoever is aggrieved can bring a new lawsuit.

MR. YOUNG: Well, Your Honor, I hear you. I understand you. I respectfully disagree. And –

THE COURT: Well, this is an instance where both sides disagree with the court, and that makes it pretty clear.

MR. SHAFER: Could I make a –

THE COURT: I thought I would have at least have one side go with me, but –

MR. SHAFER: Your Honor, you have never seen Mr. Young and I agree on anything.

THE COURT: Y'all are both in the same canoe now.

MR. SHAFER: Yes.

THE COURT: I'm not saying you're not going to succeed in turning it over or driving up on the rocks in the

[23] white water of some rapid that's just around the turn here, but right now y'all are paddling the canoe vigorously in rhythm. Strange as it may be. You may be embarrassed about being in the same canoe with the Metropolitan Government.

MR. SHAFER: You know, I'm not embarrassed. I mean I'm an officer of the court and I'm trying to do my duty and I'm trying to do my duty to my client. You know, you're right about what happened in 1989, but as I pointed out to you, you know, I was involved in that. My office handled that. And that's right, we ended it and it was over and done with. Well, they don't want to do that. And so now they keep coming.

THE COURT: You don't either.

MR. SHAFER: Pardon me?

THE COURT: You don't either.

MR. SHAFER: Well, –

THE COURT: I have offered you a chance to walk away as the winner by having judgment entered right here in this case, period.

MR. SHAFER: Well, –

THE COURT: Bam, you're the winner.

MR. SHAFER: And that's all well and good and I'll have an injunction, Your Honor. And to be very honest, you know, I don't even know procedurally how this would happen because under the injunction they haven't enacted a new [24] ordinance, they have an amendment to an ordinance, okay? So if you entered a final judgment now, it seems to me then what would happen is they amend the

ordinance in late January, they still have to come back to you because the ordinance is enjoined. It doesn't matter if it's been a different permutation or a combination of the ordinance, you're still going to be stuck with whether or not to lift the preliminary injunction in a post judgment.

THE COURT: No, a permanent injunction. If I end this lawsuit, the preliminary injunction goes out the window and it becomes a permanent injunction.

MR. SHAFER: I agree, Your Honor.

THE COURT: Then what they could do is just enact an entirely new ordinance.

MR. SHAFER: Well, –

THE COURT: And clean it up. And then you can start attacking it.

MR. SHAFER: They could.

THE COURT: And why wouldn't that be an efficient clean-cut way to deal with it?

MR. SHAFER: Well, let me give you one example. You know, we have the issue of the distance requirement, the dancer buffer zone. And that is something that was decided on an evidentiary basis, you made a determination in the preliminary injunction motion that, you know, we were not [25] likely to prevail, the preliminary injunction was not – told to me it was not the trial on the merits as well under the –

THE COURT: It was what?

MR. SHAFER: It was not told to me that it was going to be the trial on the merits.

THE COURT: No, we don't anticipate it. I'm asking you now why it can't be treated as the trial on the merits, convert it to a permanent injunction, enter final judgment.

MR. SHAFER: Well, I hink because there are a number of legal issues that, A, we've not litigated at all that were involved in the ordinance that was – the amendments that occurred after this court heard the evidence but before it ruled, and the best example I can give you of that, Your Honor, and you were talking about my motion for sanctions, and it all dealt with this issue of what's a booth and how a booth is to be defined. And I can tell you, Your Honor, that was one of the issues that caused the Sexually-oriented Business License Board to split two to two.

* * *

[28] MR. YOUNG: Judge, we're not the moving target in this case. The reason why this case is moving in increments is because the plaintiffs started off keeping some of their issues in their back pocket and not hitting us with everything they got on on the front end. They hit us on the front end with lack of prompt judicial review. That's been resolved in front of Judge Nixon. Now it's up on appeal.

Then Judge Griffin says the plaintiffs shall file a supplemental motion for preliminary injunction in which all issues upon which the plaintiffs rely in this case shall be raised. That's the motion you decided.

So, the ordinance makes a few changes that will accomodate your concerns and now we're ready again. Do they have more motions in there or more issues to raise

that they haven't shown us yet? We tweaked the ordinance, Your Honor, [29] and only as a result of the issues raised in this case. I mean let's call it what it is.

So the prolonging of the case and the fact that we keep amending the ordinance, what are they going to raise on summary judgment? What are they saving for trial? Okay? If they – I respectfully submit the plaintiffs should be charged with laying all of their issues on the table, we'll address them all in a row, you'll decide whether thumbs up or thumbs down, we'll go back and make the amendments and then we'll have a constitutional ordinance. It's not a question of if we can get a constitutional ordinance, it's a question of when. And you have already sunk a lot of blood, sweat and tears. Well, all the work that you have done in this case, Judge, up to this point, I submit, would just be wasted if this were to go – if you were to close the books and go somewhere else.

So I think the plaintiffs should have an obligation to raise all of their issues, let us address them with amendments, let you rule on them, and then we will have a constitutional ordinance some day.

* * *

[32] THE COURT: And at some point a lawsuit has to just cease being a moving target. It has to crystalize and lead to a final judgment, or otherwise it undermines the basic principles of our judicial system of predictability, stability and finality: The three great principles. And take this ordinance, this piece of legislation as it was at the time the court acted on it, make it a final judgment, anybody that's aggrieved can appeal it, and that much we know is resolved.

For instance, you have already got an appeal pending in this very matter.

* * *

[38] MR. YOUNG: Judge, may I offer a suggestion how the nibbling rule can be wiped out of this case?

THE COURT: Yes.

MR. YOUNG: Let us enact our amendments, let us file summary judgment motions with the understanding that all the issues the plaintiffs are going to raise that they can't keep any information in their back pocket waiting for trial, all the issues that they are going to be raising have to be raised on summary judgment on the ordinance that's in the process of being amended, then it seems to me, Your Honor, after summary judgment, which I submit is the way this case is going to get resolved, then we'll have a final order, we will have had all the issues raised that can be raised, no holding back in the back pockets to prolong [39] anything or surprise at trial, and we can't change our ordinance in this case any more after you have entered final judgment after they have shot all the arrows.

THE COURT: How do I know while I'm working on that you all won't conjure up some more amendments? You did it this time. I don't have any assurance. You can't bind this legislative body.

MR. YOUNG: That's true.

* * *

[40] MR. YOUNG: Well, Judge, I can't promise you what the council will or will not do. But if you have got a summary judgment motion pending, the record is closed

as of the day you close the record for the summary judgment motion. And if you grant it, the case is over. Which is a different scenario from back when we were under a preliminary injunction motion having a hearing and then awaiting the ruling on that.

So that's how I would distinguish those two scenarios. The point is is to get all – let's air all the dirty laundry, let's get all the issues on the table so we can address them.

THE COURT: Well, I'm not going to fool with any summary judgment motion. If this thing goes forward, I tell [41] you, I might consider this: Granting one further round of amendments as to the ordinance as it then exists, and permit any discovery that's reasonably necessary, and then try this case. I'm not going to whack at it on summary judgment, wind up with some issues unresolved, have to have a trial. Listen, I don't come to town on the last load of pumpkins every day. And I can see what's heading down the road. If I subscribe to something you're suggesting, I would say, Yes, I'll give you one set of amendments, shoot everything you have got in your powder pouch, and be done with it, make all your attacks, there will be no further amendments in this case, take your discovery, and we'll try the case fully and make a full record. I'm not going to hack at it and write again on a round of dispositive motions, I can tell you that flat out.

MR. SHAFER: I have got no objection to that, Your Honor.

* * *

[42] THE COURT: Just say, Judge, enter a final judgment.

MR. YOUNG: Well, then I'm not going to know what posture I'm in after we enact some amendments.

THE COURT: You'll be in the posture of having a new lawsuit, that's what you'll be in the posture of.

MR. YOUNG: Well, if we enact our amendments and then start enforcing it, are we bound by your injunction?

THE COURT: I enjoined the injunction at the time it existed at the time I ruled on it. That's all I've enjoined is you just enacting an entirely new ordinance. I don't think you would be enjoined from enacting a new – I didn't preclude you from enacting a new ordinance. I enjoined you from enforcing this ordinance as it existed at the time I ruled on it.

MR. YOUNG: Yes, sir. Well, at the risk of repeating myself, Judge, I think the number of issues have shrunken in the legal issues and that a trial is a major expense of everybody's time and that I just think it's more efficient and it lends itself to the kind of issues that are present in the case to be resolved on summary judgment.

THE COURT: Well, you're wrong about that, because [43] one thing, if it goes up on summary judgment, the Court of Appeals could always say, Well, this or this or this. It might be different if we had the full record, some material fact that's in dispute, if you send up the full record, then they have to deal with it. It's not up there in the posture of passing on whether the summary judgment was appropriate or not. They have got the full definitive evidentiary record and that's the advantage of sending a trial record up as opposed to a summary judgment record.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SIDEPOCKETS, INC., d/b/a KEEPERS, a Connecticut Corporation,	**Case No. 3:03-cv-02134-AWT**
Plaintiff,	**Hon. Alvin W. Thompson**
v.	**NOTICE OF DEPOSITION OF REPRESENTATIVES OF THE CITY OF MILFORD, CONNECTICUT, PURSUANT TO FED.R.CIV.P RULE 30(b)(6)**
CITY OF MILFORD, CONNECTICUT, a Municipal Corporation,	
Defendant.	
/	(Filed February 17, 2005)

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TO:

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NOW COMES the Plaintiff, Sidepockets, Inc., by and through its attorneys, and pursuant to Fed.R.Civ.P. Rule 30(b)(6), hereby gives notice of the deposition of the City of Milford, Connecticut. The deposition(s) shall commence on Wednesday, December 22, 2004, at 9:00 a.m., at the law

office of Daniel Silver, located at One Liberty Square, New Britain, Connecticut, 06050, and shall continue from day-to-day until completed.

Defendant is to designate and produce for deposition one or more officers, directors, or managing agents, or other persons who consent to testify on behalf of the City of Milford, Connecticut, who possess the knowledge to testify on its behalf in regard to the following matters:

1. The initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment by the City of Milford, Connecticut ("the City"), of Chapter 2.3 of the Code of Ordinances of the City of Milford ("Chapter 2.3").

2. The initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment of any amendments by the City to Chapter 2.3.

3. Any and all documents[1] submitted to the City, and/or to the Board of Aldermen, regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment by the City of Chapter 2.3.

4. Any and all documents submitted to the City and/or to the Board of Aldermen regarding, concerning, related to,

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[1] The term "document" as used herein means any memorandum, report, study, contract, agreement, chart, graph, index, data sheet, data processing card or tape, note, notebook, diary, correspondence, entry, telegrams, letter, ledger, advertisement, brochure, circular, tape, record, bulletin, paper, book, pamphlet, account, receipt, invoice, photograph, report, analysis, calculation, and any other written, typewritten, handwritten or other graphic matter, any electronic or other recording of any kind or nature, any mechanical or electronic sound recordings or transcripts thereof, however produced or reproduced, and all copies of facsimiles of such documents by whatever means made.

or in furtherance of the initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment of any amendments to Chapter 2.3.

5. Any and all documents relied upon by the City and/or by the Board of Aldermen regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment by the City of Chapter 2.3.

6. Any and all documents relied upon by the City and/or the Board of Aldermen regarding, concerning, related to, or in furtherance of the initial proposal of and subsequent drafting, consideration, revisions, adoption, and enactment of any amendments to Chapter 2.3.

7. Each and every governmental interest meant to be furthered by the provisions of Chapter 2.3.

8. Each and every governmental interest meant to be furthered by any amendments to Chapter 2.3.

9. The reason and/or purpose for enacting each provision of Chapter 2.3.

10. The reason and/or for enacting each amendment to Chapter 2.3.

11. The manner by which the provisions of Chapter 2.3 further the governmental interests described in requests 7 and 8 above.

12. The manner by which any amendments to Chapter 2.3 further the governmental interests described in requests 7 and 8 above.

13. The method or manner by which the documents as referenced in requests 3 and 5 above establish that the provisions of Chapter 2.3 were meant to address the governmental interests as set forth in request 7 above.

14. The method or manner by which the documents as referenced in requests 4 and 6 above establish that any amendments to Chapter 2.3 were meant to address the governmental interests as set forth in request 8 above.

15. The method or manner by which the documents as referenced in requests 3 and 5 above establish that the provisions of Chapter 2.3 will in fact further the governmental interests as referenced in request 7 above.

16. The method or manner by which the documents as referenced in requests 4 and 6 above establish that any amendments to Chapter 2.3 will in fact further the governmental interests as referenced in request 8 above.

17. The definition and interpretation of any provisions of Chapter 2.3 which are not specifically defined in that ordinance.

18. The definition and interpretation of any provisions in any amendments to Chapter 2.3 which are not specifically defined in those amendments.

19. The "judicial opinions," "media reports," "land use studies," "crime impact reports," "cases," "judicial findings," "reports," "statistics," and "studies" of other governmental entities regarding the effects of "Adult-Oriented Establishments," "Adult Uses," and/or "Sexually Oriented Businesses" (as those terms are generally defined and/or used in Chapter 2.3) as set forth in the Policy Statement, §2.3-1(1)-(7), of Chapter 2.3.

20. What effect, if any, that the initial licensing and regulatory provisions as set forth in the Chapter 2.3 at the time it was first enacted, which relate to "Adult-Oriented Establishments" and/or "Sexually Oriented Businesses" (as those terms are generally

defined and/or used in Chapter 2.3), have had within the City on any perceived "secondary effects," "adverse secondary effects," and/or "negative secondary effects" (as those terms are defined and/or used in the Policy Statement of Chapter 2.3) engendered by such businesses.

21. What effect, if any, that the adult business zoning provisions in the City of Milford have had on any perceived "secondary effects," "adverse secondary effects," and/or "negative secondary effects" (as those terms are defined and/or used in the Policy Statement of Chapter 2.3) engendered by such businesses.

22. The judicial opinions, media reports, land use studies, crime impact reports, cases, judicial findings, reports, statistics, and studies referenced in the Policy Statement of Chapter 2.3, and how the same relate to:

    a. The necessity for the various provisions of Chapter 2.3 and any amendments thereto; and

    b. How the provisions of Chapter 2.3 and any amendments thereto further any of the governmental interests referenced in requests 7 and 8 above.

23. The basis or bases for each of the statements in the Policy Statement of Chapter 2.3, as set forth in §2.3-1(1)-(7).

24. Any and all documents and information utilized, relied upon, or referenced in preparing the Policy Statement of Chapter 2.3.

25. The method, manner, reason, or basis (or bases) as to why the Policy Statement supports the enactment of each and every provision of Chapter 2.3.

26. The method, manner, reason, or basis (or bases) as to why the Policy Statement supports the enactment of any amendments to the provisions of Chapter 2.3.

27. Any and all documents prepared for the enforcement or interpretation of Chapter 2.3.

28. Any and all documents prepared for the enforcement or interpretation of any amendments to Chapter 2.3.

29. The identities of each and every place of "Adult-Oriented Establishment," and/or "Sexually Oriented Business" (as those phrases are defined and/or used in Chapter 2.3) that has been located within the City for the past fifteen (15) years.

30. The creation, retainage, use, and contents of any and all documents requested in Plaintiff's First Request for Production of Documents to Defendant.

Dated: December 3, 2004. Respectfully submitted,

/s/ Bradley J. Shafer

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

SIDEPOCKETS, INC. d/b/a KEEPERS Plaintiff vs. THE CITY OF MILFORD, CONNECTICUT Defendant	No. 3:03CV2134(AWT) HARTFORD, CONNECTICUT OCTOBER 30, 2006

TELEPHONIC STATUS CONFERENCE

BEFORE:

HON. ALVIN W. THOMPSON U.S.D.J.

* * *

[3] **4:02 P.M.**

THE COURT: Good afternoon.

* * *

I wanted to talk with you all about the motion for clarification or, in the alternative, to alter or amend.

* * *

[4] THE COURT: Well, I think – thank you. I feel better. But it also seems to me that there is a layer of complexity to these kinds of cases.

I went through some of the Supreme Court decisions, and I looked at some of the qualifying language in some of

the statements by the court. And it appears to me – and I'll just give you an example.

In Renton, the court said that Renton was entitled to the rely on the experiences of other cities and did not need to conduct new studies. I think I'm quoting, "so long as whatever evidence the City relies on is reasonably believed to be relevant to the problem that the City addresses."

It seems to me that implicit in that statement is that someone attacking a city's ordinance needs to be given an opportunity to probe as to whether the evidence the City relies on is reasonably believed to be relevant to the problem that the City addresses. And there are similar types of statements at other places in Renton. Also in Alameda Books and in City of Erie.

Having concluded that there are areas where a [5] plaintiff is entitled to probe through discovery, I then looked for some cases that gave examples of where you had a conflict between that right to probe and the two issues that were raised by the defendant here; namely, attorney-client privilege and legislative immunity. I really didn't find anything that I thought was really helpful to me, and I'm left with I guess conclusions at a conceptual level, which is that the plaintiff has the right to probe in order to try to show that reasons that the Supreme Court would say are reasons why an ordinance would not pass muster are present in a particular case, but it seems to me there are limitations in terms of the ability to probe that are based on Doctrine of Legislative Immunity and attorney-client privilege.

That's as far as I've gotten in my analysis.

* * *

[8] MR. BERGTHOLD: The ordinance on the text of it states that judicial decisions upon which these regulations are based, and the decision in the middle of the Renton decision and the City of Erie decision is Barnes vs. Glen Theatre, which is a 1990 Supreme Court decision. And I mention it as relevant because in that case the state of Indiana, which adopted immunity statute, keeps no legislator record.

So what we were arguing in our first argument beginning on page 2 of our memorandum in support of the motion is that basically when you have on-point judicial decisions that have upheld these regulations as advancing or serving a substantial government interest and the Supreme Court has specifically held that municipalities can rely on those other jurisdictions' experiences as recorded in these judicial decisions, that there's no need [9] to re-debate or open up discovery for the secondary effects issue.

And our authority for that was cited in our opening memorandum, and we recently submitted two cases to the Court that we think are on point. One is the Deja Vu of Nashville case that Mr. Shafer was involved in from the Sixth Circuit about two weeks ago that said –

THE COURT: I read that one.

* * *

[19] THE COURT: And what about there's another determination that needs to be made – and I'm going to [20] let Mr. Shafer talk, he's been very patient. But what you didn't address in your comment was the language "reasonably believed to be relevant." And that's where I was really focused.

* * *

[21] THE COURT: And I guess that was the kind of dynamic that I was concerned about when I said what I was focusing on was "reasonably believed."

MR. SHAFER: Exactly, Your Honor. And Mr. Bergthold is correct. He's given us a thousand pages – somewhere around there. But we're entitled to examine what that is, what it purports to be, what they're asserting those documents were and how it fits into this analysis. The Federal Rules of Civil Procedure –

THE COURT: We won't go on a discourse on that. I agree with you there.

* * *

[24] MR. SHAFER: Now, let me deal with a couple of other issues, Your Honor.

The Deja Vu [Nashville] case – and I pointed out this in my most recent pleading to Your Honor – that is also my case. And what I can tell Your Honor, and I assume you can get this stuff on Pacer, I believe –

THE COURT: For now why don't we not talk about Deja Vu.

* * *

[25] THE COURT: Okay. Why don't I say what I want to say and then you can elaborate on that point, if you want.

Having read these cases, thought about the dynamic here, and having listened to the arguments of counsel, it seems to me that the plaintiff ought to be allowed to take discovery. And I can see there might be some practical

issues that arise during the course of that, but I think the right thing to do is to have you all proceed and then have me deal with any issues that present [26] themselves.

* * *

THE COURT: Where I was coming from was the example that – the literal language from Renton was the example I was using. The evidence the City relies on is [27] reasonably believed to be relevant to the problem the City addresses. If there's no – to take the example that was given, if it turns out that the City is sitting there knowing it has no problems and what is really motivating people is not the secondary effects or concern about secondary effects which may result, but sort of, say, religious beliefs, then I would think that that ordinance would not satisfy the requirements. But I'm not purporting to give you the whole road map – the whole landscape, rather, of what would be permissible grounds for discovery. I think what would be permissible grounds for discovery would be points that in Supreme Court cases or Appellate Court cases have been acknowledged as ones where an ordinance would fail.

* * *

[30] THE COURT: Maybe what we should do – well, just so we're clear, I believe we have the Motion for Clarification. I'm granting the Motion for Clarification. I'm making it clear that what I was saying was that the plaintiff cannot go into matters protected by attorney-client privilege or legislative immunity. And I understand that plaintiff isn't intending to do that.

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SIDEPOCKETS, INC., d/b/a KEEPERS,	:	No. 3:03CV2134(AWT)
Plaintiff,	:	
v.	:	
CITY OF MILFORD,	:	
Defendant.	:	

ORDER RE MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE TO ALTER OR AMEND AND RE CROSS-MOTIONS FOR SUMMARY JUDGMENT

(Filed October 30, 2006)

For the reasons set forth during the telephonic hearing held on the record today, the Motion for Clarification or in the Alternative to Alter or Amend (Doc. No. 66) was GRANTED. The plaintiff was granted leave to proceed with discovery subject to limitations imposed by legislative immunity and the attorney-client privilege.

As discussed during the same hearing, the Plaintiff's Motion for Summary Judgment (Doc. No. 33) and the Defendant's Motion for Summary Judgment (Doc. No. 40) were DENIED without prejudice to renewal after the completion of discovery.

It is so ordered.

Dated this 30th day of October 2006 at Hartford, Connecticut.

/s/AWT
Alvin W. Thompson
United States District Judge

From: David Bugher
To: DHEID
Subject: Adult businesses

Well, I have a depressing statistic. It's good in one way and bad another. Since incorporation, the City has amassed 15,415 reported criminal incidences. Get this, 25% occurred along a 300 acre strip of Pacific Highway and South Tacoma Way. How many incidences were within 1,000 feet of all adult entertainment establishments? 400! A lousy 400! That's only 2.6% of the total! Jack Burns will love this.

What bothers me is that many communities used the secondary effects of adult businesses (i..e. crime) to justify stricter codes. This aspect or element just doesn't seem to be present. Sure, there is a great amount of crime in the area, but it is associated with I-5 and the low income neighborhoods along I-5.

I have tried working this issue from a number of different angles. I have tried to focus the types of criminal incidences (rape, burglary, vandalism) to see if such a corollary existed. It doesn't. I know this isn't what people want to hear, however, that is what is reported.

Dave

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FLANIGAN'S ENTERPRISES, INC. OF GEORGIA d/b/a Mardi Gras, 6420 ROSWELL ROAD, INC., d/b/a Flashers, HARRY FREESE, individually and as licensee for Flashers, FANNIES, INC. d/b/a Fannies, and WILLIAM H. PARKS, JR., individually and as licensee of Fannies, Plaintiffs, v. FULTON COUNTY, GEORGIA, et al., Defendants.	CIVIL ACTION NO. 1:01-CV-3109-RLV
CEEDA ENTERPRISES, INC. d/b/a Riley's Restaurant and Lounge, Plaintiff, v. FULTON COUNTY, GEORGIA, et al., Defendants.	CIVIL ACTION NO. 1:01-CV-3696-RLV

ORDER

(Filed Apr. 7, 2004)

These are actions pursuant to 42 U.S.C. § 1983, in which the plaintiffs challenge the constitutionality of a Fulton County ordinance dealing with adult entertainment establishments. Pending before the court are motions by defendant Fulton County, Georgia, for summary judgment [Doc. No. 40 in Civil Action No. 1:01-CV-3109-RLV; Doc. No. 16 in Civil Action No. 1:01-CV-3696-RLV].

* * *

The plaintiffs allege that in February or March 2001, soon after *Flanigan's Enterprises of Georgia, Inc. v. Fulton County, Georgia*, 242 F.3d 976 (11th Cir. 2001) ("*Flanigan's I*") was decided, the county attorney's office assembled personnel from the police department and the tax commissioner's office to discuss drafting a new adult business ordinance. The plaintiffs assert that Overtis Hicks Brantley of the county attorney's office instructed police chief George Coleman to "provide certain statistics" and other information about adult businesses for the purpose of adopting a new law. At some point, the board was "leaning toward . . . prohibiting the sale of alcohol in adult entertainment establishments." The plaintiffs contend that, although Chief Coleman requested that adult businesses be studied and patrolled for the purpose of rewriting the adult entertainment ordinances, he did not study whether non-adult entertainment venues were causing adverse secondary effects. Accordingly, the county report does not reveal whether adult businesses selling alcohol create more or less crime or blight than non-adult entertainment bars.

The defendant asserts that, prior to the enactment of the challenged ordinance, counsel for the plaintiffs were given notice of the public hearing and had an opportunity to be heard at the hearing. The plaintiffs assert that the notice given did not comport with the requirements of the due process provisions of the Georgia and United States Constitutions. The hearing on the proposed ordinance was held on July 18, 2001. The defendant allocated itself 30 minutes for its presentation, while the plaintiffs were given 15 minutes for each attorney. Other speakers were entitled to two minutes each.

* * *

At the July 18 hearing, attorneys representing the clubs and other affected venues spoke in opposition to the proposed ordinance. It was determined that the record would remain open until August 8 and that the vote as to the proposed ordinance would occur on August 15. The plaintiffs assert that on July 26, they served an open records request on the Fulton County Police Department seeking "a record of every response by a patrol car to any call" for police assistance from 16 locations between January 1, 1998, through June 30, 2001. On August 1, June D. Green of the Fulton County Attorney's Office responded to the request by stating that documents concerning "police calls are maintained in the Emergency Communications Department and not by the Police Department." She further stated, "[M]ost of the documents concerning the proposed adult entertainment ordinance are contained in the Report on Adult Entertainment Businesses which you have a copy of and any remaining documents are in the County Attorney's Office and can be made available to you tomorrow." The plaintiffs contend that on August 2, they wrote to Alfred E. Moore of the

Emergency Communications Department seeking the calls for police service. An identical open records request was served on the police department at that time.

* * *

The plaintiffs assert that, on August 9, 2001, on day after the period for submitting evidence in opposition to the adult ordinance had closed, Ms. Green delivered to the plaintiffs' attorneys a report dated March 2001 and entitled "Adult and Non-Adult Entertainment Establishments Statistical Analysis from 1/1/98 to 12/31/00." This report indicates that, "as a result" of the decision in *Flanigan's I*, the police department was tasked again to conduct an analysis "on the secondary effects of alcoholic [sic] consumption in adult entertainment establishments located in Fulton County." The data reviewed was obtained from crime analysis reports from January 1, 1998, to December 31, 2000. The Fulton County police department completed an analysis of calls for service and crime incident reports of six adult establishments that served alcoholic beverages compared to seven non-adult establishments that served alcoholic beverages.[5] The study concluded that there were a lower number of calls for service to those adult establishments than there were to the non-adult establishments. The study concluded that adult establishments that serve alcohol "did not have a significant impact on the police department as it relates to an increase in calls for police service, nor an increase in crime as a secondary affect [sic]." There was "no statistical correlation" between

[5] The six adult establishments were Mardi Gras, Flashers, Coronet Club, Fannie's, Riley's, and Babes. The seven non-adult establishments were Frankies, American Pie, Club International, Club 20 Grand, The Frozen Palace, The Ritz, and Crowes Nest.

the adult clubs and calls for police service. Moreover, the study indicated that non-adult establishments that served alcoholic beverages had a higher rate of calls for service than did the adult establishments. On August 9, the clubs tendered a copy of the study to Ms. Brantley and requested that she submit it to the board before allowing a vote on the alcohol ordinance. The plaintiffs also objected to the study being withheld from them. The ordinance was enacted on August 15.

The defendant has advanced several reasons as to why it is entitled to summary judgment.

* * *

After carefully reviewing the record, the court concludes that the defendant has failed to establish the second prong of the test – that the ordinance furthers an important government interest. In order to meet its burden, the defendant must have "some factual basis that [adult] entertainment in establishments serving alcoholic beverages results in increased criminal activity and other undesirable community conditions." *Flanigan's I*, 242 F.3d at 985. The Fulton County police department's March 2001 report indicates that it completed an analysis of police calls after the Eleventh Circuit rendered its decision in *Flanigan's I*. The police department concluded:

> A preview of the statistical data concluded a lower number in calls for service to adult entertainment establishments who served alcoholic beverages than those non-adult entertainment establishments who served alcoholic beverages. The review also captured no significant increase in part one crimes in adult entertainment establishment [sic] that serves alcoholic beverages. In reviewing the types of calls for service, the police

responded to 998 calls for service to adult entertainment establishment [sic] who served alcoholic beverages and 2,109 calls for service to non-adult entertainment establishment [sic] who served alcoholic beverages. The tri-annual statistical data of general calls for service was 5,556,255. The most frequent calls for service for adult entertainment establishments who served alcoholic beverages are as follows:

Information for Officer – 16%, Business Checks – 15%, Investigate Suspicious Person – 14%, ADT Alarm – 11%, Other Type of Incidents – 43%, Part I Crimes 1% (Burglary 4, Robbery 5 and Rape 1).

The reviewed data suggests that adult entertainment establishment [sic] who served alcoholic beverages did not have a significant impact on the police department as it relates to an increase in calls for police service, nor an increase in crime as a secondary affect [sic]. Based on this statistical analysis of calls for police service and reported crimes at adult entertainment establishments that serve alcoholic beverages; no statistical correlation indicated an increase in calls for service or reported crimes at these six establishments. However, the statistical data indicated that non-adult entertainment establishments who served alcoholic beverages had a higher rate of calls for service than adult entertainment establishments who served alcoholic beverages. The statistics from January 1, 1995 to May 31, 1997 versus the statistics from January 1, 1998 to December 31, 2000 indicated that the Fulton County Police Department increased calls for police service by 27.1% to adult entertainment establishment who served alcoholic beverages and 29.7% to non-adult entertainment establishments who

> served alcoholic beverages. The data does not address other secondary factors that may influence the calls for services at either type of establishment.

* * *

The most probative evidence regarding the secondary effects of adult entertainment establishments is found in the three-year statistical analysis of adult and non-adult entertainment establishments performed by the Fulton County police department. The court is somewhat troubled by the fact that it appears that this report was withheld from the plaintiffs until less than one week prior to the date on which the vote on the ordinance was scheduled. It appears that the report was not considered by the board at the meeting on July 18, 2001. The report indicates that, over the course of three calendar years prior to the enactment of the ordinance, there were more problems associated with non-adult entertainment establishments than with adult entertainment establishments.

* * *

As in *Flanigan's I*, the police study found greater reported crime connected with establishments that served alcohol but did not feature adult entertainment. The court concludes that it was unreasonable to ignore the most relevant local study in favor of a less comprehensive study and foreign studies. Because the most comprehensive analysis of the secondary effects of alcohol consumption in adult entertainment establishments in Fulton County indicated that there were more problems in non-adult entertainment establishments that serve alcohol than in the adult establishments, the court concludes that the defendant has not established that the ordinance furthers an important government interest. Accordingly, the court

will DENY the defendant's motions for summary judgment. The court need not address the plaintiffs' other arguments as to why the ordinance is unconstitutional.

For the foregoing reasons, the defendant's motion for summary judgment [Doc. No. 40] is DENIED as to plaintiff Flanigan's Enterprises, Inc., *et al.* The defendant's motion for summary judgment [Doc. No. 16] is also DENIED as to plaintiff Ceeda Enterprises, Inc.

SO ORDERED, this 7th day of April, 2004.

/s/ Robert L. Vining, Jr.
ROBERT L. VINING, JR.
Senior United States
District Judge

LACORTE, BUNDY, VARADY & KINSELLA
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Attorneys for Defendant, City of Elizabeth

D. RUSSO, INC., a New Jersey corporation, doing business as HOTT 22, Plaintiff, v. TOWNSHIP OF UNION, NEW JERSEY, a New Jersey Corporation, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO. UNN-L-2313-06 CIVIL ACTION **ORDER** (Filed Sep. 19, 2006)

THIS MATTER having been presented to the Court on September 8, 2006, the return date for an order to show cause, Vincent S. Verdiramo, Esq. of the law firm of Verdiramo & Verdiramo, PA, and Daniel R. Aaronson, Esq., of the law firm of Benjamin & Aaronson, PA, appearing on behalf of the plaintiff, and Robert F. Varady, Esq. of the law firm of La Corte, Bundy, Varady & Kinsella, attorneys for the defendant, Township of Union, New Jersey, the Court having considered the papers submitted by counsel, the arguments made by counsel at the September 8, 2006 hearing and for good cause shown;

IT IS ON THIS 19th DAY OF SEPTEMBER, 2006;

1. **ORDERED,** that limited discovery will be conducted in regard to the issue of what information the Township Committee of the Township of Union considered in regard to the secondary effects of sexually oriented

businesses prior to their passing of Ordinance No. 4942 on April 11, 2006; and it is further

2. **ORDERED,** that any party who wishes to serve written discovery demands shall do so upon the other parties on or before October 1, 2006. Said written discovery demands shall be answered by the party receiving the same on or before October 20, 2006; and it is further

3. **ORDERED,** that depositions of any parties or witnesses in regard to the aforementioned issue shall take place on or before December 1, 2006; and it is further

4. **ORDERED,** that a hearing in regard to the issue of what information and/or evidence the Township Committee of the Township of Union considered in regard to the secondary effects of sexually oriented business prior to the passing of Ordinance No. 4942 shall take place on December 11 and 12, 2006 before the Honorable Katherine Dupuis, J.S.C. at 9:00 a.m.; and it is further

5. **ORDERED,** that Count XVIII of plaintiff's amended complaint alleging that the Town failed to comply with the Open Public Meetings Act is hereby dismissed with prejudice; and it is further

6. **ORDERED,** that the temporary restraints and the terms of said restraints as set forth in Paragraphs 1, 2, 3 and 4 of an order entered by the Honorable Walter R. Barisonek on July 10, 2006 shall remain in effect; and it is further

7. **ORDERED,** that a copy of the within Order be served upon all parties within 7 days of the date this Order.

/s/ Katherine R. Dupuis
HONORABLE KATHERINE
DUPUIS, J.S.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

High Five Investments, LLC, and Shannon Video, Inc., d/b/a Entice Adult Superstore, d/b/a Entice Movies and Novelties,

Plaintiffs,

CIVIL ACTION FILE NO. 4:06-CV-0190-HLM

v.

Floyd County, Georgia,

Defendant.

ORDER

(Filed Jan. 10, 2007)

This is a civil rights action in which Plaintiffs claim that an ordinance enacted by Defendant restricting the location of adult entertainment venues violates Plaintiffs' First Amendment rights. The case is before the Court on Defendant's Motion for Protective Order [26] and Defendant's Renewed Motion for Protective Order [42].

I. Background

On August 17, 2006, Plaintiffs filed this lawsuit. On November 20, 2006, Plaintiffs served deposition notices for John Mayes, Jerry Jennings, Chuck Hufstetler, Garry Fricks, and Tom Bennett, all of whom were Floyd County Commissioners.

On December 5, 2006, Defendant filed a Motion for Protective Order as to the deposition notices served on Commissioners Mayes, Jennings, Hufstetler, Fricks, and

Bennett. Defendant argued that the deposition notices sought testimony concerning (1) whether the Commissioners enacted the ordinance at issue because the Commissioners disagreed with Plaintiffs' sexually explicit message, and (2) the extent to which the Commissioners reviewed the voluminous studies and case law on which Defendant reportedly relied in enacting the ordinance. Defendant argued that those two areas of inquiry were irrelevant to this case because: (1) an alleged illicit motive does not render an otherwise constitutional law infirm; and (2) local government officials are entitled to legislative immunity from depositions. Defendant also contended that the deposition notices failed to comply with the Federal Rules of Civil Procedure.

On December 22, 2006, Plaintiffs responded to Defendant's Motion for Protective Order by filing a notice of withdrawal of the deposition notices to Commissioners Bennett, Fricks, Hufstetler, Jennings, and Mayes. In lieu of those deposition notices, Plaintiffs served a notice of deposition on Defendant pursuant to Federal Rule of Civil Procedure 30(b)(6). The Rule 30(b)(6) deposition notice demands that Defendant produce a designated agent for deposition on January 17, 2007, at 1:00 p.m., and further provides:

> Such designated agent(s) will be prepared to testify with regard to the ordinance's enactment process, each and every governmental interest meant to be furthered by the provisions of Floyd County Ordinance 2006-002A, how such interests are furthered by the regulations, and the origin, timing, and authenticity of all materials the County relied upon for enactment of said ordinance.

(Docket Entry No. 37 at 1-2.)

On January 9, 2007, Defendant filed a Renewed Motion for Protective Order pertaining to the Rule 30(b)(6) deposition notice. Defendant argues that Plaintiffs' Rule 30(b)(6) deposition notice intends to conduct the same allegedly improper and irrelevant inquiries as anticipated by Plaintiffs' original deposition notices to the individual Commissioners. Defendant argues that the enactment process for the ordinance is a matter of public record, and that this proposed area of inquiry is irrelevant. Defendant also contends that the ordinance itself states the governmental interests "meant to be furthered" by the ordinance, and that the only other way to determine what the Commissioners meant in enacting the ordinance is to interview the Commissioners to inquire about their legislative motive, which is an improper area of inquiry. Defendant further argues that the topic of "how such interests are furthered by the regulations" clearly asks for legal analysis pertaining to the substantial government interest, and that this question is a matter of law, not of fact. Finally, Defendant contends that the topic concerning the "origin, timing and authenticity of all materials the County relied upon for the enactment of said Ordinance" is irrelevant to the constitutionality of the ordinance. Because the Court has concluded that the Renewed Motion for Protective Order is due to be denied, and because the deposition noticed is scheduled to occur within less than one week and will require Defendant to prepare a witness to testify on the issues contained in the Rule 30(b)(6) notice, the Court will not require Plaintiffs to file a response to the Motion.

II. Discussion

Federal Rule of Civii Procedure 26(b)(1) governs the scope of discovery, and provides, in relevant part:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). Federal Rule of Civil Procedure 26(c) states, in relevant part:

> Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

Fed. R. Civ. P. 26(c). Keeping those rules in mind, the Court addresses Defendant's contentions.

First, the Court cannot find that an inquiry concerning "the ordinance's enactment process" is irrelevant because the minutes of the public meetings purport to reveal that process. This inquiry is relevant to Plaintiffs' claims and to this action.

Second, the Court finds that the area of inquiry concerning the interests "meant to be furthered" by the ordinance may not impermissibly seek the mental processes or intentions of the individual Commissioners, or otherwise seek information irrelevant to Plaintiffs' constitutional claims. By including this area of inquiry, Plaintiff may seek information that is pertinent to the issues that the Court must resolve in connection with a summary judgment motion.

Third, the Court cannot, and will not, preclude Plaintiffs from inquiring as to how Defendant believes "such interests are furthered by the regulations" just because Defendant believes that this inquiry is a matter of law, not fact. Indeed, information on this issue is relevant to Plaintiffs' claims, and the Court will not preclude Plaintiffs from obtaining that information.

Finally, contrary to Defendant's arguments, Plaintiffs are entitled to inquire concerning the "origin, timing and authenticity of all materials relied upon for the enactment of said Ordinance," if only to ensure that those materials, many of which Defendant submitted to the Court, are authentic. This information also is relevant to Plaintiffs' constitutional claims, and the Court will not preclude Plaintiffs from obtaining the information.

In sum, the Court concludes that the information Plaintiffs seek in their Rule 30(b)(6) deposition notice is relevant for the reasons set forth above and in accordance

with the Court's Order, and is within the scope of discovery as set forth in Rule 26(b)(1). The Court therefore denies Defendant's Renewed Motion for Protective Order. The Rule 30(b)(6) deposition scheduled for Wednesday, January 17, 2007, may proceed as noticed.

III. Conclusion

ACCORDINGLY, the Court **DENIES AS MOOT** Defendant's Motion for Protective Order [26], and **DENIES** Defendant's Renewed Motion for Protective Order [42].

IT IS SO ORDERED, this the 10th day of January, 2007.

/s/ Harold L. Murphy
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

RELIABLE CONSULTANTS, INC. d/b/a DREAMER'S,	:	Case No. 4:02-CV-0458-Y (Judge Means)
Plaintiff-Intervenor,	:	
v.	:	
CITY OF KENNEDALE, TEXAS,	:	
Defendant.	:	

PLAINTIFF-INTERVENOR RELIABLE CONSULTANTS, INC. d/b/a DREAMER'S' BRIEF IN SUPPORT OF MOTION IN LIMINE

(Filed Jun. 18, 2004)

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Dreamer's

I. Introduction and Statement of Facts

This case involves a challenge by Plaintiff-Intervenor Reliable Consultants, Inc. ("Reliable") to the City of Kennedale's sexually oriented business zoning scheme. Presently pending before the Court is the City's Motion for Summary Judgment, which is based in part upon the assertion that the zoning regulations challenged by Reliable target the secondary effects, and not the content, of adult businesses. In support of its secondary effects argument, the City has submitted the results of a survey of a small number of property appraisers in Tarrant County, Texas regarding their opinions of sexually oriented establishments. (Memorandum regarding Tarrant County Appraisers Survey, Def. Apx. pp. 103-108; Apx. 1-6.)[1] Both the survey and the memorandum summarizing its results were prepared by April M. Virnig, an attorney for the City of Kennedale. (*Id.*) Ms. Virnig was deposed by Reliable regarding her research, credentials, and methodology. A

[1] Citations to "Def. Apx." refer to the Appendix to Brief in Support of Defendant's Motion for Summary Judgment filed by the City of Kennedale, while citations to "Apx." refer to the Appendix in Support of Plaintiff-Intervenor's Motion in Limine.

complete transcript of the deposition is provided at Apx. pp. 7-200.

Facts uncovered by Reliable during Ms. Virnig's deposition indicate that the survey was not conducted with the proper methodology and controls to render it reliable. (*See* Affidavit of Robert Bruce McLaughlin, Apx. p. 201 § VII.) Given these concerns, Reliable now moves the Court to exclude the survey and memorandum on the basis that it constitute impermissible hearsay under the Federal Rules of Evidence.

II. The Federal Rules of Evidence Require Exclusion of Ms. Virnig's Appraisal Survey Memorandum.

Subject to few limited exceptions, evidence which qualifies as hearsay is generally inadmissible in federal court. *See* F.R. Evid. 802. The Evidence Rules define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." F.R. Evid. 801(c). Numerous courts have determined that surveys which attempt to assess individual preferences and opinions absent actual testimony from each survey participant constitute hearsay. *See, e.g., Pittsburgh Press Club v. United States,* 579 F.2d 751, 757-58 (3d Cir. 1978). Such testimony then only becomes admissible if it satisfies a rigorous test designed to ensure that only reliable and trustworthy information is heard by the trier of fact. *See, e.g., Brunswick Corp. v. Spinit Reel Co.,* 832 F.2d 513 (10th Cir. 1987).

Survey evidence may be admitted as an exception to the hearsay rule if the survey is material, more probative

on the issue than other evidence, and if it has guarantees of trustworthiness. *Brunswick Corp.,* 832 F.2d 513. For an opinion survey to be independently admissible as evidence, the proponent must in some manner validate the sampling technique and explain how reliability was assured. *Baumholser v. Amax Coal Co.,* 630 F.2d 550, 552 (7th Cir. 1980); *King-Size, Inc. v. Frank's King Size Clothes, Inc.,* 547 F.Supp. 1138, 1157-58 (S.D. Tex. 1982); 4 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 803(17)(01), at 803-250 to 251 (1981). The burden on the proponent to show reliability is greater if the survey purports to represent subjective data, such as attitudes or beliefs, because of the inherent difficulty of accurately measuring such data. *Judicial Conference of the United States, Handbook of Recommended Procedures for the Trial of Protracted Cases,* 25 F.R.D. 351, 428-29 (1960); *Richardson v. Quik Trip Corp.,* 591 F.Supp. 1151 (S.D. Iowa 1984); *see also National Football League Properties, Inc. v. New Jersey Giants, Inc.,* 637 F.Supp. 507 (D. N.J. 1986). In addition, the individual conducting the survey must have some expertise in the area the survey is designed to assess in order to render the survey itself admissible. *See Froemming v. Gate Federal Savings & Loan Association,* 822 F.2d 723, 732 (8th Cir. 1987) ("The District Court [properly] ruled that [a market value witness] was not qualified to testify as to the value of the mall because he had no substantial experience with syndicating shopping centers, other than the one such syndication he was preparing at the time of trial.").

The Reference Manual on Scientific Evidence, Federal Judicial Center, Rochester, New York (1994), includes a lengthy discussion of the use of surveys in court. In this regard, the Manual states:

> [Surveys] permit an assessment of the extent to which the measured objects or respondents are likely to adequately represent a relevant group of objects, individuals or social organisms. All questions asked of respondents and all other measuring devices can be examined by the court and the opposing party for objectivity, clarity, and relevance, and all answers or other measures obtained can be analyzed for completeness and consistency. In order to permit the court and the opposing party to closely scrutinize the survey, so that its relevance, objectivity and representativeness can be evaluated, the design and execution of the survey are described in detail by the party proposing to offer it as evidence.

Id. at 226. The Reference Manual then goes on to identify four critical questions to be asked and answered before a survey is deemed admissible: 1) was the survey designed to address relevant questions?; 2) was participation in the design, administration, and interpretation of the survey appropriately controlled to ensure the objectivity of the survey?; 3) are the experts who designed, conducted or analyzed the survey appropriately skilled and experienced?; and 4) are the experts who will testify about surveys conducted by others appropriately skilled and experienced? *Id.* at 231-33; *see also* McCormick on Evidence § 208, Vol. II, p. 937 *et. seq.* (citing Manual for Complex Litigation 116 (5th Ed. 1981); 4 Louiseel and Mueller, Federal Evidence § 472 at 957 (1979)). Further questions posed by the Reference Manual include:

- were questions on the survey framed to be clear, precise and unbiased?;
- were filter questions provided to reduce guessing?;

- did the survey use open-ended or closed-ended questions? How was the choice in each instance justified?;
- what approach was used to avoid or measure potential order or context effects?;
- if the survey was designed to test a causal proposition, did the survey include an appropriate control group or question?;
- what limitations are associated with the mode of data collection used in the survey?;
- what procedures were used to reduce the likelihood of a biased sample?; and
- what precautions were taken to ensure that only qualified respondents were included in the survey?

Id. at 240-41.

Courts have employed a similar analysis in determining whether survey evidence is admissible. For example, one court identified the following prerequisites for an admissible survey: 1) the proper definition of the universe; 2) selection of a representative sample of the universe; 3) questions framed in a clear, precise and non-leading manner; 4) the use of sound interview procedures by interviewers who had no knowledge of the litigation or the purpose of the study; 5) accurate reporting of the data; 6) analysis of the data in accordance with proper statistical methods; and 7) assurance of the objectivity of the entire process. *See Toys "R" Us, Inc. v. Canarsi Kiddie Shop, Inc.*, 559 F.Supp. 1189 (E. D. N.Y. 1983). Other courts have also determined that the methodological strength of the survey bears directly on its admissibility. *See, e.g., Prudential Insurance Company v. Gibraltar Financial Corporation,*

694 F.2d 1150 (9th Cir. 1983); *Zippo Manufacturing Company v. Rogers Imports, Inc.*, 216 F.Supp. 670, 681-82, 684 (S.D. N.Y. 1963). The Fifth Circuit has reached an identical conclusion. *See Pebble Beach Co. v. Tour 18 Ltd.*, 155 F.3d 526, 544 n.10 (5th Cir. 1998).

As demonstrated by both the deposition of Ms. Virnig (Apx. pp. 7-200) and the affidavit of Robert Bruce McLaughlin (Apx. p. 201 § VII), the Tarrant County Appraisers Survey tendered by the City is not sufficiently trustworthy to overcome the presumption that it constitutes inadmissible hearsay. As reflected in Ms. Virnig's deposition, the survey was not conducted with the proper controls set forth in the Reference Manual and required by the courts to limit sample error, context effects, or confidentiality. (Deposition of April Virnig, Apx. pp. 28-38.) Neither did the survey use proper question format to ensure accurate responses. (Deposition of R. Bruce McLaughlin, Apx. p. 201 § VII.) Moreover, the low response rate and possibility of biased responses also undercut the survey's reliability. (*Id.*) And, as an aside, the raw data attached to the survey also indicate that it was not properly conducted, tabulated, and reported.[2] These defects in the survey, which are more fully identified and explained in the Affidavit of R. Bruce McLaughlin, Apx. p. 201 § VII, render it not only scientifically unreliable but also inadmissible under the cases cited above. The survey should accordingly be excluded from consideration at the summary judgment stage.

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[2] For example, while the memorandum reports that a total of 36 responses were received, the raw scores for the first question listed under Section A at Apx. p. 2 total 39 responses.

III. Conclusion

For the foregoing reasons, the memorandum prepared by April Virnig, one of the City of Kennedale's attorneys in this litigation, is inadmissible and should be excluded from this Court's resolution of the pending summary judgment motions.

Respectfully submitted,

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